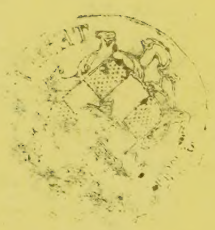

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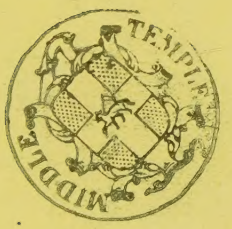

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THE SETTLED LAND ACT, 1882

Amended 47+48 Vic ch 18- 1884

WITH AN

INTRODUCTION AND NOTES,

AND

Concise Precedents

OF

CONVEYANCING AND CHANCERY DOCUMENTS REQUIRED UNDER THE ACT.

BY

ARTHUR UNDERHILL, M.A., LL.D.,

OF LINCOLN'S INN, BARRISTER-AT-LAW,

Author of "A Concise Treatise on Private Trusts," "A Manual of Chancery Procedure," &c.

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PREFACE.

THE primary object of this Work, is to afford some assistance to practitioners, when called upon to advise as to the extent and meaning of the very large and very novel powers conferred by the Act. A subsidiary object, however, is to afford a concise account of its provisions to students and to the many practising lawyers whose time is too much occupied to allow of a thorough and exhaustive study of the Act itself.

To obtain the first of the two objects above indicated, each section of the Act has been carefully noted and compared with analogous statutory enactments, and, where necessary, cross references have been given, and decided cases, bearing on the subject matter of the several sections, cited.

To obtain the second object, I have endeavoured in the Introduction to give, in the short space of twenty-eight pages, a summary of the former law, and of the changes in it which have been introduced by the new Act.

I have also thought it expedient to append a few precedents of such conveyancing and Chancery documents as may be expected to be frequently required under the new Act; and it is trusted that these will be found to be of some use to those practitioners who may have to put the powers conferred by the Act into practical use.

The reader must not expect to find in this Work subtle objections or hypercritical refinements. On the contrary, my endeavour has been to produce a practical treatise, in which the difficulties of the Act are sought to be elucidated rather than emphasized.

In conclusion, I must render grateful thanks to my friend, Mr. Ralph Hawtrey Deane, of Lincoln's Inn, for his valuable assistance, by which my labours have been lightened, and the utility of the book greatly increased.

A. U.

1, Old Buildings, Lincoln's Inn,
Nov. 8th, 1882.

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THE

SETTLED LAND ACT, 1882.

INTRODUCTION.

On the first day of the year 1883 there will come into operation a statute which, although it has attracted but scant attention among the general public, effects more important social changes in our land laws, than any which have been introduced since the middle ages. The Settled Land Act, 1882, aims at nothing less than the removal of all existing restraints on the free alienation of land caused by what are popularly known as entails, and technically as settlements.

Such a change, it is obvious, is of a very sweeping character, and in order that the provisions of the new Act may be understood and appreciated, it is necessary for the reader to bear in mind the main facts of the history of limited ownership of real estate in England.

Soon after the Conqueror had established the feudal laws in this country, it became usual to grant lands to the grantee and the "heirs of his body," either generally or of a particular sex, instead of to his heirs simply. In this form of grant we find the first attempt to "settle" English land. The attempt, however, was not favoured by the courts of law, which refused to recognize a limitation of property inalienable and confined to a particular line of heirs, and held the estate to be a conditional fee simple—that is, conditional on

the birth of an heir apparent of the description indicated by the deed of gift,—and that condition having been fulfilled, the Court held that the grantee could freely alienate the land as if it were an absolute fee simple. On the other hand, if he failed to alienate, and died without leaving heirs answering the description in the deed of gift, then the property reverted to the donor.

The action of the Court in refusing to acquiesce in the attempt to create an inalienable estate, however commendable according to modern notions, was opposed to the policy of the feudal system, and accordingly the statute 13 Edw. 1, c. 1, commonly called the "Statute De donis conditionalibus" or the "Statute of Westminster the second," was passed for the express purpose of setting aside the decision of the judges. By that statute, it was provided that "the will of the giver, according to the form in the deed of gift manifestly expressed, shall be from henceforth observed."

The passing of the statute De donis, created the estate which has been since known to our law as an "estate tail," an estate which was in its inception an estate of strict settlement, intended to preserve the settled land in perpetuity in the hands of a particular line of heirs. The mode of doing this was by assuring the land to the grantee and the heirs of his body, either generally or of one sex only.

For nearly two centuries after this enactment became law, lands granted in tail continued subject to the fetters of a strict settlement; and it was not until the reign of the fourth Edward that an effectual means of evading the statute was invented. Just as the Court had formerly invented the fiction of a conditional fee, so it

now invented or adopted the fictions of collusive and unreal actions of ejectment, which became known as Fines and Common Recoveries.

Of the nature and consequences of these unreal proceedings it is unnecessary to speak here. It suffices to say that the effect of a common recovery, and of a fine levied with proclamations, was to put a complete end to the entail, and change it into a fee simple. Notwithstanding the grotesque and cumbrous nature of this mode of defeating an entail, it became a most common form of assurance, and, as Blackstone says, was looked upon as "the legal mode of conveyance by which a tenant in tail might dispose of his lands and tenements, so that no Court would suffer them to be shaken or reflected on."

Common recoveries and fines were abolished in 1834 by the statute 3 & 4 Will. 4, c. 74, and a simple mode of barring estates tail substituted, viz., an ordinary deed enrolled in the High Court of Chancery. However, the abolition of fines and recoveries was merely an alteration in procedure; estates tail were really robbed of all their virtue by the invention of the common recovery, for directly it became possible for a tenant in tail to turn his estate into a fee simple, the efficacy of an entail as an instrument for keeping property in the hands of a particular family, from generation to generation, was destroyed. Whether the conversion was effected by a common recovery, or by an enrolled deed, was merely matter of detail.

After the invention of the common recovery, no attempt to settle land seems to have been made until the time of the Civil War. The danger of forfeiture which was then incurred by landowners of both political

parties, led Sir Orlando Bridgeman to invent the modern system of settlement.

Speaking broadly, the general framework of a modern settlement of land is as follows:—

Assuming that the settlor intends to strictly settle land on himself and his issue, he conveys it to trustees in fee, to the use of the trustees for ninety-nine years upon the trusts afterwards declared; and subject thereto to the use of the settlor and his assigns during his life without impeachment of waste; and from and after his decease to the use and intent that his widow and her assigns shall receive a specified yearly rent-charge by way of jointure and in lieu of dower, with power to distrain and enter and sequestrate the rents and profits by way of enforcing such jointure; and subject thereto to the use of other trustees for 1,000 years by way of securing the widow's jointure, and also portions for younger children; and subject to the uses above specified to the use of the first, second, and other sons of the settlor successively in tail male, with an ultimate remainder to the use of the settlor in fee simple. The term of ninety-nine years is limited merely by way of securing (by sale or mortgage of the term) the payment to the settlor's wife during his life of an annual sum of pin-money.

It will be seen that on the face of it such a settlement merely ties up the property during the settlor's life, for upon his death the first tenant in tail can pay the younger children's portions, and disentail the estate, and so make himself absolute owner subject to the widow's annuity. There is no absolute means of avoiding this, because the law does not permit property to be settled for an indefinite number of life estates, but

makes it obligatory that the property shall vest absolutely either in fee or tail within a life or lives in being and twenty-one years after.

In practice, however, the property is rarely permitted to go out of settlement, for upon a tenant in tail in remainder coming of age, parental pressure is brought to bear upon him, and in consideration of a present handsome annuity out of the estate, he is induced to resettle the property, cutting his estate tail down to a life estate, and limiting the estate in remainder to *his* first and other sons in tail male; and when his first son comes of age the estate is again resettled in the same way.

The modern system of settlement in short depends upon providing, by means of constant resettlements, that no person of full age shall be entitled to a greater estate than an estate for life. This is the keystone of the edifice, and consequently the law of settled land is (apart from express powers contained in the settlement itself) in reality identical with the law relating to life estates.

It is obvious that a settlement pure and simple must give rise to many inconveniences. A tenant for life formerly could not lease lands for any term certain, but only for a term commensurate with his own life. Still less could he sell or exchange the lands, however desirable it might be for the estate or for the family. If he spent money in improvements, the money so spent went to the next owner, to the detriment of the younger children. He could not cut timber except for fuel or repairs or thinning underwood, nor could he commit any other kind of "waste," either by permitting the buildings to go to ruin, or by voluntarily bringing

about their total or partial demolition or alteration, or by opening *new* mines or quarries.

To obviate many of these inconveniences, it has been very usual to specify in the settlement itself, that the estate of each life tenant should be "without impeachment of waste," the effect of which is that he may cut timber in a husbandlike manner for his own benefit, open mines, and commit other acts of waste with impunity, so long as he does not pull down or deface the family mansion, or fell ornamental timber, which is known as equitable waste. Settlements, too, very generally contained explicit powers, enabling the trustees, with the consent of the tenant for life, to sell, exchange, and lease the settled lands.

But although usual, such powers were sometimes omitted, and in that case it frequently became necessary, for the due management of the estate, that private Acts of Parliament should be obtained, authorizing particular tenants for life to sell, exchange, or lease the settled lands. It need scarcely be said that the costs incident to such applications were in all cases onerous, and, except where the property was very large, prohibitive.

Thus matters stood until the early part of the present reign. By the statute 3 & 4 Vict. c. 55, subsequently supplanted by the statute 8 & 9 Vict. c. 56, tenants for life and other limited owners were empowered, with the leave of the Court of Chancery, to make permanent improvements by way of draining lands, and to charge the money expended in making such improvements upon the inheritance with interest.

In 1864, still larger powers of improvement of land were given to tenants for life by the Improvement of

Land Act, which enables a tenant for life, with the sanction of the Inclosure Commissioners, to raise money by way of rent-charge for improvement of lands. The Act defines improvement of land as :—

1. The drainage of land, and the straightening, widening, deepening, or otherwise improving the drains, streams, and watercourses of any land:
2. The irrigation and warping of land:
3. The embanking and weiring of land from the sea or tidal waters, or from lakes, rivers, or streams, in a permanent manner:
4. The inclosing of lands, and the straightening of fences, and re-division of fields:
5. The reclamation of land, including all operations necessary thereto:
6. The making of permanent farm roads and permanent tramways, and railways and navigable canals; for all purposes connected with the improvement of the estate:
7. The clearing of land:
8. The erection of labourers' cottages, farmhouses, and other buildings required for farm purposes, and the improvement of, and addition to, labourers' cottages, farmhouses, and other buildings for farm purposes, already erected, so as such improvements or additions be of a permanent nature:
9. Planting for shelter:
10. The constructing or erecting of any engine-houses, waterwheels, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, lead-pipes, conduits, water-courses, bridges, weirs, sluices,

floodgates or hatches, which will increase the value of any lands for agricultural purposes.

11. The construction or improvement of jetties or landing-places on the sea coast, or on the banks of the navigable rivers or lakes, for the transport of cattle, sheep and other agricultural stock and produce, and of lime, manure and other articles and things for agricultural purposes: provided that the commissioners shall be satisfied that such works will add to the permanent value of lands to be charged to an extent equal to the expense thereof:
12. The execution of all such works, as, in the judgment of the commissioners, may be necessary for carrying into effect any matter hereinbefore mentioned, or for deriving the full benefit thereof.

The Limited Owners Residences Act, 1870, Amendment Act, 1871, further enlarges this definition by enacting (sect. 3) that the erection of a mansion-house and such other usual and necessary buildings, outhouses and offices as are commonly appurtenant thereto, and held and enjoyed therewith, and the completion of any mansion and such appurtenances already erected, and the improvement of and addition to any house which is capable of being converted into a mansion-house suitable to the estate on which the same stands, so as such improvement and addition be of a permanent nature (provided that such mansion-house so erected or enlarged or converted is suitable to the estate on which it stands as a residence for the owner of such estate), shall be improvements within the meaning of the Improvement of Land Act, 1864. The sum to be charged on the

settled land for any such mansion or other building, was by the Limited Owners Residences Act, 1870, limited to two years' net rental of the settled property.

By the Limited Owners Reservoirs and Water Supply Act, 1877 (40 & 41 Vict. c. 31) the construction of reservoirs or other permanent waterworks, effecting a permanent yearly increase in the value of the settled property, is declared to be an improvement within the meaning of the Improvement of Land Act, 1864.

The above-mentioned Acts were doubtless great improvements on the old law, but they were of minor importance compared to the change introduced in the year 1856, when the first "Act to facilitate leases and sales of settled estates" was passed. That Act was subsequently amended in 1858, 1864, 1874 and 1876, and finally in 1877 the principal Act and the amending Acts were repealed and consolidated with certain additional provisions by the Settled Estates Act, 1877.

The powers given by the Settled Estates Acts are, shortly, as follows:—

1. In the first place the Acts enabled the old Court of Chancery, and afterwards the Chancery Division of the High Court, to grant or renew leases of the whole or any parts of settled estates, or of any rights or privileges over them for any purpose, whether involving waste or not; provided (1) That every lease should be made to take effect in possession at or within one year from making of it, and should not exceed in duration twenty-one years for an agricultural or occupation lease, forty years for a mining lease or lease of water-mills, way-leaves, water-leaves, or other rights or easements; sixty years for a repairing lease, or ninety-nine years for a building lease; but such leases (except agricultural

leases) might be for longer periods than those above specified if the Court should be satisfied that such was the usual custom of the district and beneficial to the inheritance; (2) That on every such lease the best rent, or reservation in the nature of a rent, either uniform or not, that could be reasonably obtained should be reserved, payable half-yearly or oftener, without taking any premium, with certain specific provisions with regard to mining leases; (3) That no such lease should authorize the felling of timber, except for clearing spaces for buildings or works; (4) That every such lease should be by deed, executed in counterpart, and containing a condition of re-entry on non-payment of the rent for a period of twenty-eight days after it should become due, or for some less period. There are also certain provisions authorizing the insertion of such covenants, &c. as the Court may think desirable, and also in relation to the surrender of leases for the purposes of renewal.

The Court also was empowered to authorize preliminary contracts to grant leases, any of the terms of which might be varied in the leases themselves, and also to authorize the lords of settled manors to give licences to their copyhold or customary tenants to grant leases of lands held by them of such manors. The power to authorize leases might be exercised by the Court, either by approving of particular leases, or by ordering that powers of leasing in conformity with the provisions of the Act, should be vested either in the existing trustees of the settlement or in any other persons; and such powers, when exercised by such trustees, take effect in all respects as if the power so vested in them had been originally contained in the

settlement, so as to operate (if necessary) by way of revocation and new appointment of uses, or otherwise, as the Court may direct. And in every case the Court, if it should think fit, was empowered to impose any conditions as to consents or otherwise on the exercise of the power, and authorize the insertion of provisions for the appointment of new trustees from time to time, for the purpose of exercising the powers of leasing.

The Court was also empowered, if it should deem it proper and consistent with a due regard to the interests of all parties entitled under the settlement, to authorize a sale of the whole or any parts of any settled estate, or of any timber (not being ornamental timber) growing on a settled estate; and when land should be so sold for building purposes, it was provided that the whole or part of the consideration might consist of a chief rent. Minerals might be excepted from any such sale, and any rights or privileges reserved; and the purchaser might be required to enter into covenants or submit to any restrictions which the Court may deem advisable.

The Court might also direct that any part of any settled estate should be laid out for streets, or roads, paths, squares, gardens or open spaces, sewers, drains or watercourses, either to be dedicated to the public or not; and might direct that the parts so laid out should remain vested in other trustees upon trusts for continuing the appropriation thereof to such purposes; and might also direct that the expense of carrying out such works should be defrayed by means of a sale or mortgage of, or charge upon, all or any part of the settled estate; or be received and paid out of the rents, or out of moneys liable to be invested in purchase of lands to be settled to the like

uses, or out of the income of such moneys, or out of accumulations of rents; and might also give directions as to the repair of such works out of such rents or accumulations.

The Court was also empowered, if it should consider it proper and consistent with a due regard for the interests of all parties, to sanction any action, defence, petition to parliament, parliamentary opposition, or other proceedings appearing to the Court necessary for the protection of any settled estate, and to order that all or any part of the costs be raised and paid by any of the means above mentioned for defraying the costs of laying out streets, &c.

Besides the powers above specified, and which were given to the Court, the Settled Estates Act, 1877, (following the earlier Act of 1856,) empowers the following persons to grant leases without application to the Court. Such persons are, (1) any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for life, or for a term of years determinable with any life or lives, or for any greater estate, (either in his own right or in right of his wife,) *unless the settlement should contain an express declaration to the contrary;* (2) all tenants by the curtesy or in dower; and (3) any husband in right of a wife seised in fee. Such leases may comprise the whole or any part of the property except the mansion-house and demesnes thereof and other lands usually occupied therewith, but are limited to terms not exceeding twenty-one years, to take effect in possession or within one year from the making of the lease. Such leases, too, must contain similar provisions to those specified in relation to leases granted by the Court. This power, although very useful, has been considerably

restricted by a decision of the Master of the Rolls in *Taylor* v. *Taylor* (L. R., 20 Eq. 297), where his lordship laid it down, that where land is vested in trustees upon trust to collect the rents, and after payment of all rates, insurance, repairs and other outgoings, to pay the net residue to A. for life, such a limitation did not render A. a person capable of granting a lease under the above-mentioned provisions.

Thus the law stands until the end of the present year. Up to then a tenant for life (apart from express power in the settlement) can only sell the settled land under an order of the Court, and where the settlement was made before 1856, can only lease under a similar order; and even where it was made subsequently to 1856, he can only lease for twenty-one years for occupation or agricultural purposes.

The main object of the new Act is to enable a tenant for life (which term is used to include generally the class of limited owners) to dispose by sale, enfranchisement (of copyholds), partition, lease, or otherwise, or (where the settled land is an undivided share, or is held in undivided shares) to join with others in the sale, enfranchisement, partition, lease, or otherwise, of any part of the settled land, or even of the whole of it (sects. 3 and 19), proper provision being made for securing what is called "capital money" arising under the exercise of the powers conferred by the Act, and otherwise for protecting the interests of the remainderman and of others interested under the settlement.

One of the most salient points of the new measure is, that its operation is not confined to future settlements. It is, in fact, indefinitely retrospective (sect. 2 (1)).

The usual form of the power of sale inserted in

settlements, gives the *trustees* power to sell at the request of the tenant for life. The trustees, having no beneficial interest in the property, were considered not likely to be very zealous in the matter, and under the new Act the *tenant for life* has power to sell according to his own judgment and discretion (sect. 3), without the necessity for the trustees to take any active steps for initiating or carrying out the sale, or for the estate being put to the expense and delay of an application to the Court under the Settled Estates Act. A tenant for life may also (but only with the sanction of the Court) sell heirlooms (sect. 37).

It may be well here to point out that the expression "tenant for life" has a somewhat extended signification under the new Act. By sect. 58 it is practically made to include all limited owners *whilst in possession*. Thus it includes tenants in tail, even after possibility of issue extinct, and including such as are restrained from barring the entail by special statute unless the property was bought with public money in consideration of public services; tenants in fee simple conditional, with executory limitations over; persons entitled to base fees; tenants for years determinable on life and tenants pur autre vie (not being mere lessees at a rent), whether their estate is liable to cease on any event during life, or to be defeated by an executory limitation over, or is subject to a trust for accumulation of income for payment of debts or otherwise; tenants by the curtesy and (this is no doubt intended to reverse the decision in *Taylor* v. *Taylor*, sup. p. 13) persons entitled to the income of land under a trust for payment thereof to them during life or pur autre vie, whether it be subject to expenses of management or not, or be merely until

sale of the land or until forfeiture of interest by bankruptcy or other event.

The Act also provides that every infant seised or entitled in his own right *to land*, is to be deemed, for the purposes of the Act, a tenant for life of settled land; and that when a tenant for life, or person having the powers of a tenant for life under the Act, is an infant, then the powers of the Act may be exercised on his behalf by the trustees of the settlement, or if there are none, then by such person and in such manner as the Court, on the application of the guardian or next friend of such infant, may direct (sects. 57 and 60). It would seem that the general intention of these sections was to enable the lands of every infant, whether tenant for life or tenant in fee, to be sold, leased, &c.

With regard to married women, too, sect. 61 provides that where a married woman is entitled to settled land for her separate use (whether by statute or otherwise), she may exercise all the powers given to a limited owner who is sui juris; in other cases, she and her husband must join. It is also declared that a restraint on anticipation in the settlement shall not prevent the exercise by a married woman of the powers conferred by the Act.

Limited owners, who are lunatics so found, may exercise the powers conferred by the Act by their committees, with the leave of the judges having jurisdiction in lunacy, on the petition of any person interested in the settled land, or of the committee (sect. 62). There seems, however, to be no provision to meet the case of a lunatic not so found.

The 63rd section of the Act contains very useful provisions extending the powers of the Act to cases

where land is vested in trustees upon trust for sale, and upon trust to hold the purchase-money for the benefit of persons entitled in succession, whether absolutely or subject to a trust for accumulation. The person entitled to the income (whether absolutely or subject to the trust for accumulation) is to be considered a tenant for life of the land. Hitherto, in such cases, there has been no power to lease the land without application to the Court—a want which every conveyancer must have continually had brought to his notice.

It will be seen, therefore, that in effect the statute makes a power of sale, leasing, and partition, incident to the estate of every limited owner in possession other than a mere hirer or lessee.

The Act, however, contains a series of checks to prevent the abuse of his powers by the limited owner. It gives him every freedom in the management of the property, but it gives him no facility for appropriating it or grossly mismanaging it. Thus (sect. 4) a sale must be at the best price that can be obtained, and (sect. 53) the vendor is bound to have regard to the interest of all parties; and by way of "sanction" he is declared to have the duties *and liabilities* of a trustee for those parties—a veiled threat which should be well borne in mind by those who have to advise limited owners as to exercising the powers conferred on them by the Act.

The vendor, too, must (sect. 45) give one month's notice to the trustees, and to their solicitor if known to him, of any intended sale, exchange, partition, lease, mortgage, or charge. It does not, however, appear clearly whether a limited owner of land of which there never were any trustees can sell without such notice.

On the one hand, the purchaser is not concerned to *inquire* about the giving of the notices, so that the section as to giving the notice to the trustees would seem to be merely directory. On the other hand (sect. 44), providing that if at any time a difference arises between the tenant for life and trustees respecting the exercise of any of the powers of the Act, either party may apply to the Court, seems to suggest that the intention of the framers of the Act was that there should always be trustees who should keep an eye on the tenant for life, and prevent him making improvident arrangements. If this be so, although any dealing in good faith under the Act by a purchaser, lessee, mortgagee, or other person, is expressly protected, and as against him it is to be conclusively taken that he has given the best price, consideration or rent, as the case may be, that could reasonably be obtained, and to have complied with all the requisitions of the Act (sect. 54), yet it is submitted that the knowledge that there were no trustees in existence to whom the statutory notice could be given, would vitiate the exercise of the statutory powers.

Special protection is accorded to the mansion-house and demesnes, "and the land usually occupied therewith" (a rather ambiguous phrase). They *may* be sold or leased, but not by the tenant for life alone; he must get the consent of the trustees, or an order of Court (sect. 15).

The tenant for life, although the active selling party, does not receive what is called capital money under the Act. All such money must be paid either to the trustees (whose receipt is a good discharge (sect. 40)), or into Court (which effectually exonerates the person making the payment (sect. 46)) at the vendor's option

(sect. 22). If it is paid to the trustees, the vendor chooses the mode of investment (within specified limits), and if he does not select any, the trustees decide for him (sect. 22). If it is paid into Court, the Court directs the investment on the application of the vendor or trustees; but in that case it does not appear that the vendor or trustees have the choice of investment. An investment once made, whether by trustees or the Court, cannot be altered during the life of the tenant for life without his consent. The investment is therefore not merely a provisional one, like investments under the Lands Clauses Act or the Settled Estates Act, pending a re-investment in land, but is permanent if the tenant for life so chooses.

With regard to the modes of investment, the Act authorizes investment in certain securities specified in sect. 21, or the money may be applied in discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled lands, including land tax, tithe rent-charge, crown rent, chief rent, or quit rent, or in payment for improvements, or in payment for equality of exchange or partition of the settled lands, or in the purchase of divers specified landed estates (but where the settled estate lies in England the lands so purchased must be in England too (sect. 23)), or in payment to any person becoming absolutely entitled or empowered to give an absolute discharge, or in payment of costs, or in any other way in which money produced by the exercise of a power of sale in the settlement is applicable thereunder (sect. 21).

It may be here stated that the investment clause not only applies to capital money payable under the Act, but is, by sects. 32 and 33, extended to money paid

into Court independently of the Act (for instance, by a railway company), and to capital money generally arising under settlements, or powers contained in settlements.

The income of the investments goes as the rents of the land, if not sold, would have gone (sect. 22), and the capital devolves upon the remainderman and others interested under the settlement as if there had been no sale. In fact, notwithstanding the actual conversion of the land into money, the money is nevertheless to be treated as land.

It is obvious, however, that where the estate sold by a tenant for life is either a mere term of years or other limited interest in possession, or a reversion or other estate *not* in possession, it would be unfair that the purchase-money and income should be treated exactly like the purchase-money and the income of purchase-money arising from the sale of a fee simple. Accordingly the Act provides that the purchase-money for terms of years, or other estates less than the fee, or for reversions, is to be so laid out, and paid, and applied by the trustees or Court, as the case may be, as to give the parties interested the like benefit as they would have had from the lease or other estate sold (sect. 34).

It need scarcely be said that land purchased with capital money, or exchanged for settled land, must, if freehold, be conveyed to the uses of the settlement, and, if copyhold or leasehold, must be vested in the trustees upon trusts as nearly as possible corresponding with the uses or trusts of the settlement, and money actually raised on the security of the *land sold* may be charged by way of substitution on the land bought (sect. 24 (4)), or on any other part of the settled land (sect. 5) with the consent of the incumbrancer. A vendor, however, who conveys

land by the direction of the tenant for life, so as to subject it to the charge by way of substitution, is not bound to inquire whether it is properly subjected to it (sect. 24).

With regard to the improvements authorized to be made by the Act and to be paid for out of the purchase-money of lands sold, a long list is given in sect. 25, which comprises all those specified in the Improvement of Land Act 1864, except bridges, and the Limited Owners Reservoirs and Waterworks Act 1877, and some others, but not those mentioned in the Limited Owners Residences Act 1870. The tenant for life is controlled in the application of the money for improvements. Some men would *improve* an estate until it was worthless. The Act therefore provides (sect. 26) that the tenant for life must submit to the trustees or to the Court (according as the money is in the hands of the trustees or in Court) a scheme for the execution of the improvements, showing the proposed expenditure. Where the money is in the hands of the trustees, they may apply the money in or towards payment for the whole or any part of the proposed improvements, either on the certificate of the Land Commissioners (the new name of the old Inclosure Commissioners, Copyhold Commissioners, and Tithe Commissioners), or of an engineer or surveyor nominated by the trustees and approved by the Land Commissioners or the Court, that the improvement in respect of which payment is to be made has been properly executed, and specifying the amount payable in respect thereof, or upon an order of Court directing the trustees to make the payment. Where the money is in the hands of the Court, the scheme is to be submitted to the Court, which may, on the certificate of an engineer or surveyor approved by

the Court, or on other evidence, give directions as to the application of the money or any part of it in payment for the improvements.

The tenant for life may also join with any other person interested, in executing any improvement or in contributing to the cost thereof (sect. 27).

In addition to improvements effected with money produced by sale of part of the settled land, the Act (sect. 30) extends the powers conferred by the Improvement of Land Act, 1864, so as to embrace all improvements specified in sect. 25 of the present Act, thereby enabling the tenant for life, if he lays out his own money in improvements on the settled land, to charge the amount expended on the settled land for the benefit of his personal estate after his death, subject to the assent of the Land Commissioners.

The Act also provides (sect. 29) that every limited owner and his employés may, without impeachment of waste, execute any improvement specified in sect. 25, or inspect, repair, or maintain it; and for these purposes may use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

It is obvious that the improvements ought not (at all events except in exceptional cases) to be *maintained* out of capital; and consequently, by sect. 28, it is provided that the tenant for life, and each of his successors in title (being limited owners), shall maintain and repair improvements executed under the provisions of the Act

at their own expense, during such period (if any) as the Land Commissioners may by certificate prescribe, and also insure insurable improvements in an amount to be fixed by the commissioners. The tenant for life is restrained from cutting down trees planted by way of improvement, except to thin them; and he is bound from time to time (if required by the commissioners) to report to them the state of improvements executed under the Act. Any default by a tenant for life in keeping improvements in repair, or reporting to the commissioners, and any cutting of timber contrary to the Act, renders him liable to an action by any other person interested under the settlement (sect. 28). The tenant for life may, however, fell other timber (even where impeachable for waste), so long as it is ripe and fit, and provided he obtains the consent of the trustees or the Court. Where, however, he is impeachable for waste three-fourths of the purchase-money for the timber so sold is to go as capital money.

With regard to leases, the Act puts the tenant for life in a position corresponding with that in which he is placed respecting sales. By sect. 6 he is empowered to grant building leases for ninety-nine years, mining leases for sixty years, and other leases for twenty-one years. All leases are to be by deed, and to be made to take effect in possession, not later than twelve months after its date. The best rent is to be reserved that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out by the lessee for the benefit of the settled land. The taking of a fine is quite a novelty; the powers of leasing in the Settled Estates Act expressly prohibiting the taking of a fine. What

is to be done with a fine or premium does not very clearly appear. There can be no doubt that it *ought* to come under the provisions of sect. 34, and be laid out, invested, accumulated, and paid, in such manner as the trustees or the Court (as the case may be) shall in their judgment direct, so as to give to the parties interested the like benefit as they might lawfully have had from the interest in respect of which the fine was taken. Whether, however, the words of that section "purchase-money paid in respect of a lease for years or life, or years determinable on life," are sufficiently wide to comprise a fine or premium seems doubtful. Every lease is to contain a covenant by the lessee for payment of rent, and a condition of re-entry on rent being at most thirty days in arrear. A counterpart is to be executed by the lessee, but the execution of the lease by the tenant for life is to be good evidence of the counterpart having been executed; and a statement contained in a lease or indorsed on one, and signed by the tenant for life, respecting any matter of fact or of calculation under the Act, in relation to the lease, is in favour of the lessee and those claiming under him, to be sufficient evidence (sect. 7).

There are certain conditions prescribed by the Act with regard to building and mining leases (sects. 8 and 9), particularly with regard to the rents, which it would be useless to set forth here, as they had better be studied in the Act itself. But where it is shown to the Court that it is the custom of the district to lease for building or mining purposes for a longer term, or on other conditions than those specified in the Act, *or in perpetuity*, and that it is difficult to make such leases except on the local terms, the Court may authorize,

either generally or as to particular leases, leases or grants in accordance with the local custom, including perpetual leases at a fee-farm rent (sect. 10).

In connection with sales or leases for building purposes, the tenant for life may cause or require any part of the settled land to be appropriated for streets, squares, gardens, or open spaces, with necessary adjuncts, and for that purpose may execute a trust deed, which may be enrolled in the central office (sect. 16).

A sale, lease, exchange, partition, or mining lease, may be made with or without an exception or reservation of all or any minerals, and with or without a grant or reservation of way-leaves, powers of working, &c.; and an exchange or partition may be made, subject to, and in consideration of, the reservation of an undivided share in mines or minerals (sect. 17).

In the case of mining leases, one-fourth of the rent is to go as capital money where the tenant for life is not impeachable for waste, a provision the justice of which is very hard to understand, inasmuch as such a person could have worked the mines without setting aside anything for capital. In other cases three-fourths is to be considered capital (sect. 11).

The leasing powers comprise leases made in pursuance of a contract by a predecessor, or in pursuance of a valid covenant of renewal, or for confirming a previous void or voidable lease; but in the last case, the void or voidable lease must be made to conform to the conditions of the Act (sect. 12).

A limited owner may also accept, with or without consideration, a surrender of any lease of settled land, whether made under the Act or not; and may make new or other leases of the surrendered land or any part

of it, or of the land, together with additional land, on certain conditions, for which the reader is referred to sect. 13.

The power of leasing extends not merely to ordinary leases, but also in the case of lands of settled manors, gives the tenant for life power to license copyholders to grant leases, upon certain terms to be specified in the licence, which latter is to be enrolled on the Court rolls (sect. 14).

In addition to the powers of sale, leasing, partition, exchange, and enfranchisement, before referred to, the Act gives a limited owner power to raise money by mortgage (either in fee or for other the estate the subject of the settlement, or for a term of years) where money is required *for enfranchisement or equality of exchange or partition*, but there is no power to mortgage for other purposes. In such cases resort must still be had to the Improvement of Land Act, 1864. Money raised by mortgage under the Act is to be considered capital money (sect. 18).

The mode of perfecting a sale, exchange, partition, lease, mortgage or charge, is by deed executed by the tenant for life. Such a deed is effectual to pass the land thereby purported to be assured, discharged from all limitations of the settlement and all estates, charges and interests subsisting under the settlement, but does not affect estates prior thereto, nor mortgages or charges created prior to the date of the deed for securing money *actually raised*, nor leases and grants at fee-farm rents; nor grants of common, easements, or other privileges previously granted for money's worth. In case of copyholds, the deed must be entered on the Court rolls, and on production of the deed the steward

of the manor is bound to enter it, and on payment of proper fees, fines, &c., to admit any person whose title under the deed requires to be perfected by admission. The steward may, however, require to see so much of the settlement as shows the title of the tenant for life (sect. 20).

A tenant for life may not only *exercise* any of the powers of the Act, but he may contract to do so, and may vary or rescind or accept surrenders of such contracts with or without consideration; and all such contracts will be binding on and enure for the benefit of the settled land, and enforceable against the successors in title of the tenant for life. Any such contract is, however, not to form part of the title of a lessee from the tenant for life (sect. 31). The same section also gives power to a tenant for life, or any successor in title, to apply to the Court to give directions for enforcing, carrying into effect, varying, or rescinding any such contract.

The Act repeals the 17th section of the Settled Estates Act, 1877, but practically re-enacts it in a stronger form, empowering the Court, if it thinks fit, to approve any action, defence, petition to parliament, parliamentary opposition, or other proceeding for the protection of settled land, or the recovery of land being, or alleged to be, subject to a settlement, and to give directions as to the costs (sect. 36).

The Act provides for the appointment by the Court of trustees where there are none, on the application of any person interested under a settlement; and capital money under the Act is not to be paid to less than two trustees, unless the settlement expressly authorizes payment to one (sects. 38 and 39). This must be borne in

mind by purchasers and others dealing with tenants for life, as one trustee cannot give a good discharge (sect. 40). Trustees acting under the Act are carefully protected against liability for acquiescing in the exercise by the tenant for life of the powers given by the Act, and in several other particulars, and they may reimburse themselves their expenses out of the trust property, and whenever they differ with the tenant for life may appeal to the Court to adjudicate between them (sects. 41 to 44).

The machinery for invoking the aid of the Court (which, in ordinary cases, is the Chancery Division of the High Court, but may be the County Court where the capital value involved does not exceed 500*l.* or the income 30*l.*), and for providing for costs, and relating to the constitution of the Land Commissioners, is carefully worked out in sects. 46 to 49.

As has been pointed out before, a tenant for life is made a trustee for all persons interested, and it is therefore only right and proper that (as the Act provides) the powers given to him by the Act should not be capable of assignment or release, or of passing to an assignee of the estate of the tenant for life. In fact, they remain exerciseable by the tenant for life after any assignment of his estate, provided that the consent of the assignee is obtained; and even that is not necessary for an exercise of the leasing powers where such assignee is not in actual possession, a provision which seems rather stringent, but is perhaps only an extension of the principle contained in sect. 18 of the Conveyancing and Law of Property Act, 1881, giving mortgagors the right of leasing (sect. 50).

A tenant for life may not contract *not* to exercise any of the powers of the Act; nor is any prohibition

in that behalf in any settlement to be of any validity; nor is any conditional limitation, that the estate shall be held by the tenant for life until he exercises the power of the Acts with a gift over, to be permissible; nor is any forfeiture on exercise of the powers to be valid. Such a conditional limitation is to take effect as if the tenant for life never did exercise the powers of the Act (sects. 51 and 52).

The powers of the Act are cumulative, and are not in substitution for express powers contained in any settlement, and these may be larger than the powers conferred by the Act; and in that case they may be construed so far as possible (and unless the settlement prohibits such construction) as powers conferred by the Act (sects. 56 and 57).

The Act extends to Ireland with certain modifications in its machinery (sect. 65).

The Settled Estates Act, 1877, is not repealed (except as to sect. 17 above referred to), but it is difficult to see what use can be made of it hereafter. It is presumed that it is left unrepealed out of abundance of caution, so as to meet any possible cases of settled estates not coming under the new Act.

Such is a summary of this useful measure, a more detailed examination of which will be found in the following pages. An incidental result of the Act will no doubt be to abbreviate future settlements, inasmuch as powers hitherto inserted in settlements similar to those conferred by the Act, may henceforth be omitted altogether. Another incidental result will be that the complication of titles will be sensibly mitigated, inasmuch as the power of the life tenant to give a good title will, in many instances, supersede the necessity of elaborate investigations.

Amended 47 & 48 Vict. c. 10

THE SETTLED LAND ACT, 1882.

(45 & 46 Vict. c. 38.)

An Act for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon. [10*th August*, 1882.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—Preliminary.

Short title; commencement; extent.

1.—(1.) This Act may be cited as the Settled Land Act, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

Although, by sect. 2, the Act is made to apply to existing, as well as to future, settlements, the powers

Sect. 1.

conferred by the Act cannot be exercised until the Act comes into operation on the 1st of January, 1883. It would seem that, before that date, even a contract to sell, or lease, or to exercise any of the powers of the Act, will not be valid as against the successors in title of a tenant for life. Until then, tenants for life must rely upon the powers (if any) expressly given to them by the settlement, except so far as they may come within the provision as to granting leases contained in sect. 46 of the Settled Estates Act, 1877, which is still unrepealed. Those provisions, however, only apply to settlements made after the 1st of November, 1856, and do not apply at all where the tenant for life is not the manager of the estate (*e. g.* where the management of the estate is given to trustees who are to pay the *net* rents to the tenant for life, *Taylor* v. *Taylor*, L. R., 20 Eq. 302). As to contracts entered into by tenants for life during 1882, undertaking to exercise the powers of the Act when it comes into operation, see note to sect. 12, *infra*.

II.—Definitions.

Definition of settlement, tenant for life, &c.

2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2.) An estate or interest in remainder

or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or

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his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income:

(ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(iii.) Building purposes include the erecting and the improving of, and the adding

to, and the repairing of buildings; and a building lease is a lease for any building purposes or purposes connected therewith:

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes:

(v.) Manor includes lordship, and reputed manor or lordship:

(vi.) Steward includes deputy steward, or other proper officer, of a manor:

(vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will:

(viii.) Securities include stocks, funds, and shares:

(ix.) Her Majesty's High Court of Justice is referred to as the Court:

(x.) The Land Commissioners for Eng-

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land as constituted by this Act are referred to as the Land Commissioners:

(xi.) Person includes corporation.

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The imperative nature of the Act is at once foreshadowed by the fact that the definition clause is wholly unqualified by the usual words "unless a contrary intention appears in the settlement." The definitions are not even qualified by the words "unless there is anything in the subject or context repugnant thereto in this Act." As to the importance of considering well the interpretation clause of an Act of Parliament, see *Zouche* (*Lord*) v. *Dalbiac* (L. R., 10 Ex. 172; 23 W. R. 564; 44 L. J., Ex. 109).

Sub-ss. 1—3. Settlement.

A very wide definition is given to the term "settlement." That word is defined in the Settled Estates Act, 1877, as "any Act of Parliament, deed, agreement, copy of court roll, will or other instrument, or any number of such instruments under or by virtue of which any hereditaments of any tenure, or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively." The same Act also defines "settled estates" (equivalent to the new term "settled land") as signifying "all hereditaments of any tenure, and all estates or interests in any such hereditaments which are the subject of a settlement."

The new Act includes, under the term "settlement," all the instruments comprised in that term under the Settled Estates Act, 1877, with the addition of covenants to surrender.

Sub-ss. 2 and 3. Estates undisposed of by settlement.

It also extends the definition of settled land, by providing that an estate or interest in reversion, not disposed of by the settlement, and reverting to the settlor, or descending to the testator's heir, shall be considered an estate or interest subject to the settlement, and as such shall come within the definition of "settled land." This is an important extension of the term, for under the Settled Estates Acts it has been held, that the Court had no power to deal with such reversions, but only with the *estate or interest the*

subject of the settlement. (*Grey* v. *Jenkins*, 26 Beav. 355.) Sect. 2.

"Land."

The new Act uses the word "land" instead of "hereditaments." The word land in law "includes the surface and substance of the earth under all circumstances, though covered with water or buildings, and everything which is permanently fixed to the ground or incident to it, whether above it, upon it, or under it, such as houses, woods, waters, mines, fossils." (Smith's Real and Personal Property, 4th ed. p. 2.)

The word "hereditaments" is a word of somewhat wider signification, embracing heirlooms and annuities (as distinguished from rentcharges). The Act, however, expressly extends the word "land" so as to make it include incorporeal hereditaments (subsect. 10, i.). Heirlooms are made the subject of a special section, so that the word "land," extended as it is to incorporeal hereditaments, would seem to be more appropriate than the word "hereditaments."

Leases at a rent not settled land.

At first sight, the definition of settled land would seem to embrace the reversion expectant on the determination of a term of years created by way of lease at a rent, in cases where the term of years is limited by way of succession (a very unusual state of affairs). However, a moment's consideration shows that there would, in that case, be no person who could exercise the powers of the Act, for there can be no tenant for life, strictly speaking, in a term of years, inasmuch as a life estate is, in the eyes of the law, a longer estate than a term of years, however long. The 58th section, no doubt, extends the meaning of the term tenant for life, but it expressly excepts tenants for life or pur autre vie in terms of years *at a rent.*

Settled chattels.

The Act is intended to be limited to land and estates and interests in land, and does not affect settled chattels, unless they happen to be heirlooms. (See *D'Eyncourt* v. *Gregory*, L. R., 3 Ch. D. 636.)

Lands conveyed in trust for sale to be settled lands.

In addition to lands and estates and interests therein settled by way of succession, the 63rd section extends the powers conferred by the Act to cases in which land, or any estate or interest in land, is, under

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a settlement, subject to a trust or direction for sale, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income for the benefit of any person for his life or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely or subject to a trust for accumulation of income for payment of debts or otherwise, or to any other restriction. As to cases coming under this clause, see notes to sect. 63, *infra*.

Settled land must be land settled "by way of succession."

The land, or estate or interest therein, must be "limited to or in trust for persons by way of succession." The same phrase is used in the Settled Estates Act, 1877, and it has been held that a trust out of income to pay an annuity to a testator's widow for life, and subject thereto to hold the property and the income in trust for the testator's children as tenants in common, was a limitation by way of succession. (*Collett* v. *Collett*, L. R., 2 Eq. 203; and see *Re Shepheard*, L. R., 8 Eq. 571.)

So an ultimate limitation to the heirs of a person as personæ designatæ, and not by way of descent, has been held to be a limitation by way of succession. (*Beioley* v. *Carter*, L. R., 4 Ch. Ap. 230.)

Under the Settled Estates Act it has been held that there is no limitation by way of succession within the meaning of the Act, where the only limitation is in the form of a gift to a class ascertainable at a future date; *e. g.*, to such of the children of a deceased person as shall attain twenty-one. (*Re Burdin*, 7 W. R. 711; on app., 28 L. J., Ch. 840.) However, where there was a gift over in strict settlement in case a person did not attain a vested interest, it was held that the property was limited in succession. (*Re Horne*, 29 L. T., N. S. 830.) Under the new Act it is submitted that *Re Burdin* would be differently decided, inasmuch as the contingent reversion expectant on the event of none of the class attaining twenty-one would, under sect. 2, sub-sect. 2, be an estate within the settlement, and, therefore, although it might never take effect by way of succession, yet in accordance with the decision in *Re Horne* (*supra*)

Query, whether executory devise without prior or subsequent limitation constitutes "settled land."

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the property would be limited by way of succession, inasmuch as there would be a contingent reversion constructively limited by the settlement. It may be asked who, under such circumstances, would, during the infancy of the class, be entitled to exercise the powers of a tenant for life. It would seem that if anyone could do so, it would be the heir or residuary devisee of the testator, as he would seem to come under the description in sect. 58 (1) (ii) of a tenant in fee simple with an executory limitation, gift or disposition over on failure of his issue *or in any other event*. The "event" in such a case would be the attainment by the respective members of the class of twenty-one years of age, the estate of the heir or devisee being cut down from time to time as they respectively attained that age, until, upon the majority of the youngest or death of the last minor, the heir or devisee would cease to have any interest in the property.

If the above construction of the Act is not correct, a very serious omission has been made; for otherwise lands may be tied up during the minority of a class in such a way as to be both unsaleable and unleaseable, a result quite contrary to the spirit of the Act. However, the point is so doubtful, that it would (in the absence of judicial authority) be unwise for a purchaser to assume that a contingent limitation of land to a class or an individual on the happening of a future event without any intermediate limitation to any person is sufficient to render it settled land within the meaning of the Act.

Ecclesiastical and charity lands.

Ecclesiastical estates and charitable estates do not seem to fall within the scope of the Act.

Sub-s. 4. State of facts constituting settled estate.

The 4th sub-section of the interpretation clause follows a similar provision in the Settled Estates Act, 1877. Under the first Settled Estates Act of 1856, doubts were entertained as to whether, in the construction of the definition of "settled estate," the Court was bound by the state of facts existing at the period of the settlement taking effect, or by the state of facts at the time of the application to the Court. (*Re Goodwin's Settled Estates*, 3 Giff. 620.) It is difficult, however, to see how the question could arise

Sect. 2. under the new Act, in view of the powers given to trustees and guardians in cases of infancy, by sects. 59, 60.

Sub-s. 5. Tenant for life. This definition must be read along with section 58, which greatly extends it by making it comprise various limited owners who are not strictly tenants for life.

Sub-s. 6. Joint owners. This clause must be construed as relating solely to an exercise of the powers of the Act in relation to the entirety of the settled land, and not to restrict the powers of one life tenant in common in relation to his undivided share, which of itself constitutes settled land under the definition of "land," contained in sub-sect. 10, i.

Sub-s. 7. Incumbered estates. This interpretation is merely intended to preserve the powers of the tenant for life in case the estate is incumbered, but it must be read in connection with sect. 20, by which it will be seen that the powers of a tenant for life, when exercised, bind all persons claiming *under the settlement*, whether incumbrancers or not; but do not affect estates, interests or charges having priority to the settlement, nor estates, interests and charges which may have been created for securing money actually raised at the date of the deed, nor leases and grants made for value in money or money's worth, or agreed so to be before the date of the deed, by the tenant for life, or any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life. By sect. 50, sub-sect. 3, too, it is provided, that the powers of a tenant for life shall operate "without prejudice to the rights of any person, being an assignee, for value of the estate or interest of the tenant for life, and, in that case, the assignee's rights shall not be affected without his consent; except that, unless the assignee is actually in possession of the settled land, or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained without fine, and, in other respects, are in conformity with this Act." The word assignee in-

cludes a mortgagee or other incumbrancer (sect. 50, sub-sect. 4). Sect. 2.

Where there are no trustees within this definition the Court may appoint trustees (sect. 38). Sub-s. 8. Trustees.

The Act is not very explicit as to what shall, and what shall not, be considered capital money, but generally leaves the determination of that question open. Purchase-money is nowhere expressly stated to be capital money, except where it arises from the sale of heirlooms (sect. 37); but it clearly is capital money nevertheless. Certain proportions of the money arising from the sale of timber are declared to be capital money by sect. 35, and also certain proportions of royalties arising from mines by sect. 11. It is presumed, too, that fines or premiums taken for leases would be capital money, subject, however, to the provisions of section 34. The decision in *Brigstocke* v. *Brigstocke* (L. R., 8 Ch. D. 357) to the effect that fines constitute income is (it is conceived) not applicable to cases in which a lease is *created* by a tenant for life, but only to cases where there are renewable leases, and where the fines drop in from time to time according to some custom or according to some contract prior to the settlement. If this were not so a tenant for life might, under the leasing powers of the Act, grant a lease at an enormous premium and a nominal rent, and so pocket a great part of the capital value of the land, a reductio ad absurdum. Sub-s. 9. Capital money.

Income includes not merely ordinary rents and profits but also casual profits (*Brigstocke* v. *Brigstocke, supra*); such, for instance, as the proceeds of the sale of a next presentation to a living (*Albemarle, Earl,* v. *Rogers,* 2 Ves. 477; *Cooke* v. *Cholmondeley,* 3 Dr. 1); and heriots and fines payable by copyhold tenants or on renewable leases (Shep. Touch. 77). Sub-s. 10. Income, rents, minerals, &c.

It may be noticed that "possession" includes receipt of "income," which last term includes "rents and profits," and paragraph (ii) defines "rent" as including yearly and other rent, toll, duty, royalty or other reservation by the acre or the ton or otherwise. These three definitions, therefore, depend very much on one another.

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The definition of minerals is rather wide, including all "substances in, on, or under the land, obtainable by underground or by surface working." This definition must, however, of course be limited to "mineral" substances, otherwise it might include crops and other vegetable growths.

III.—Sale; Enfranchisement; Exchange; Partition.

General Powers and Regulations.

Powers to tenant for life to sell, &c.

3. A tenant for life—

(i.) May sell the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same; and

(ii.) Where the settlement comprises a manor,—may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and

(iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and

(iv.) Where the settlement comprises an undivided share in land, or, under

the settlement, the settled land has come to be held in undivided shares, —may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Powers are cumulative.

All the powers given by the Act are cumulative (sect. 56 (1)), and are exerciseable notwithstanding the existence of powers of a similar nature in the settlement; and, on the other hand, such powers may be exercised, notwithstanding the powers given by the Act. Where, however, there is a conflict between the provisions of the settlement and the provisions of the Act, the provisions of the Act are to prevail (sect. 56 (2)). Where larger powers are given by the settlement, they are, so far as may be, to operate and be exerciseable in the like manner, and with all the like incidents, effects and consequences, as if they were conferred by the Act, unless a contrary intention is expressed in the settlement (sect. 57 (2)).

Exercise of powers cannot be forbidden or released, &c.

The powers conferred by the Act are absolute, and are not capable of being negatived by the settlement, whether by a limitation over on exercise of the powers, or otherwise, as to which the reader is referred to sections 51 and 52. Nor are the powers assignable, and a contract not to exercise them is void (sect. 50); but this provision is to some extent modified in favour of assignees and mortgagees of the life estate by sect. 50, sub-sects. (3) and (4).

Ancillary provisions.

The powers conferred by the Act may be exercised from time to time, and the tenant for life may execute and do all deeds, instruments and things necessary or proper for carrying out the same (sect. 55). The actual conveyance, and the estate and interest which the tenant for life is capable of conveying, are provided for specifically by sect. 20, and the protection of the purchaser by sect. 54. The payment of purchase-money to the trustees, or into Court, is regulated by sect. 22. The validity of the trustees' receipts, as complete discharges, forms the subject of sect. 40;

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and sect. 46 (2) makes the payment of money into Court by any person a complete exoneration.

Powers retrospective.

It will, of course, be borne in mind that the Act is indefinitely retrospective, and applies to existing as well as to future settlements (sect. 2 (1)).

Regulations respecting sale, enfranchisement, exchange, and partition.

4.—(1.) Every sale shall be made at the best price that can reasonably be obtained.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made

with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be. Sect. 4.

(8.) Settled land in England shall not be given in exchange for land out of England.

Subsections 1 and 2 are merely directory to the tenant for life, and render him personally liable in case he makes a wasteful bargain. A purchaser, lessee, mortgagee, or other person, on any sale, exchange, partition, lease, mortgage, or charge, dealing with a tenant for life, is, as against all parties entitled under the settlement, to be conclusively taken to have given the best price, consideration or rent (as the case may require) that could be reasonably obtained by the tenant for life, and to have complied with all the requisitions of the Act (sect. 54). Sub-ss. 1 and 2. Best consideration: protection of purchasers, &c.

If, however, the tenant for life makes an improvident bargain, he will be liable, inasmuch as, by sect. 53, he is (in relation to the exercise by him of the powers of the Act) to be deemed to be in the position, and to have the duties and liabilities, of a trustee. It would seem to be clear that a sale under the Act can only be made for an absolute sum certain, and not in consideration of a fee farm rent. Section 10 authorizes the *Court* to empower a tenant for life in particular districts, and under peculiar circumstances, to grant lands for building or mining purposes at fee farm or other rents, a provision which impliedly negatives the right of a tenant for life to make such grants without the concurrence of the Court. Liability of tenant for life. Price.

The *words* of the power of sale are not so wide as those of the power given to trustees for sale by the 35th section of the Conveyancing and Law of Property Act, 1881, inasmuch as trustees under that section are expressly authorized to "concur with any other person in selling" the property, and to sell "either subject to prior charges or not." It is, however, conceived that, in a proper case, a tenant for Sub-ss. 3—6. Words of power of sale, &c.

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life might join with other persons in selling the settled land. For instance, let us suppose that the owner in fee of an estate granted a perpetual right of fishing and boating over a lake on the estate, and afterwards settled the estate. It is confidently submitted that the tenant for life might join with the owner of the water rights in selling the estate free from those rights. The case of *Re Cooper and Allen's Contract* (L. R., 4 Ch. D. 802; 25 W. R. 301) seems to govern such transactions. The Court in that case laid it down that the true test is, whether it is more or less beneficial to the estate that it should be sold with the joinder of some third party or not. "In those cases where it is not manifest on a mere inspection of the properties that it is more beneficial to sell them together, then you ought to have reasonable evidence that it is a prudent and right thing to do, and that evidence, as we know by experience, is obtained from surveyors and other persons who are competent judges." (Per Sir G. Jessel, M. R., *Re Cooper and Allen, supra.*) But, as to leases, see and consider *Tolson* v. *Sheard* (L. R., 5 Ch. D. 19), and Farwell on Powers, 497 *et seq.*

With regard to prior incumbrances, the 20th section, sub-sect. 2, seems to imply that the estate may be sold subject to them. Where the incumbrance consists of a definite sum of money, it is clear that the sale may be made free from it. (*Cavendish* v. *Cavendish*, L. R., 10 Ch. Ap. 319; 23 W. R. 313.) But where it consists of an estate or interest of an undefined value, then it is conceived that the rule in *Re Cooper and Allen* (*supra*) must govern the case.

Sub-s. 7. Enfranchisement.

This sub-section seems to be intended to provide for any right of common or other right attached to land enfranchised under the Act, either going with such enfranchised land, or being separated from it, and being re-granted to the manor. It is apprehended that such re-grant would enure for the benefit of the lord and not of the copyholders however.

Transfer of incumbrances on land sold, &c.

Special Powers.

5. Where on a sale, exchange, or partition there is an incumbrance affecting land

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sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

This section which introduces a novelty will doubtless prove very convenient.

IV.—Leases.

General Powers and Regulations.

Power for tenant for life to lease for ordinary or building or mining purposes.

6. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

(i.) In case of a building lease, ninety-nine years:

(ii.) In case of a mining lease, sixty years:

(iii.) In case of any other lease, twenty-one years.

Hitherto (except under the authority of express powers contained in the settlement itself) a tenant for life could only demise for a term not exceeding twenty-one years so far as relates to estates in England, and thirty-five years so far as relates to estates in Ireland; and such leases were always

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subject to impeachment for waste. Even this power was limited to settlements made after the 1st of November, 1856.

The new Act gives to tenants for life the same powers of leasing, without application to the Court, as are given to the Court itself by the 4th section of the Settled Estates Act, 1877.

It must be borne in mind by a tenant for life, in granting leases under this section, that he is bound by section 53 to see that the proposed lease is proper and consistent with the interests of all parties. By analogy with the practice of the Court under the Settled Estates Act, 1877, it is conceived that a tenant for life ought to have such evidence of this as would satisfy the Court, if the Court were called upon to exercise a similar power. (See Settled Estates Act Orders, 1878, Order 15.)

The power to grant ordinary leases for twenty-one years is, by section 65, extended to thirty-five years in the case of Ireland.

Regulations respecting leases generally.

7.—(1.) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and

delivery the execution of the lease by the tenant for life shall be sufficient evidence. Sect. 7.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Sub-s. 1. Leases to be by deed, &c.

Notwithstanding this provision, it is clear that a simple *agreement* for a lease made by a tenant for life, under sect. 31, would be ordered to be specifically performed, so long as it satisfied the requirements of the Statute of Frauds. And a lease not under seal would probably be construed as an agreement to grant a lease, and as such would be ordered to be specifically performed. (See *Parker* v. *Taswell*, 2 D. & J. 559.)

Sub-s. 2. Best rent, fine, &c.

This sub-section is a considerable relaxation of the leasing provisions of the Settled Estates Act. By that Act, even leases authorized by the Court were bound to be made at the best rent, *without taking any fine or other benefit in the nature of a fine*, and *to be made payable half-yearly or oftener*. (Settled Estates Act, 1877, sect. 4.)

The best rent is still to be reserved, but "regard is to be had to any fine taken," a provision which it is conceived (though with some hesitation), impliedly permits a fine or premium or fore-gift (see definition of fine, sect. 2, sub-sect. 10, ii) to be taken. It may be plausibly contended, however, that a mere passing reference such as this is not sufficient to authorize the taking of a fine, unless expressly authorized by the settlement. It is, however, apprehended that the fact that a fine would be capital money, takes away the old objection to fines being taken by tenants for life, and that *cessante ratione cessat lex*. In short, it would be absurd if a tenant for life could sell a term of years already granted, but could not *grant* a term by way of sale, *i.e.* by way of fine. A fine or pre-

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mium, if taken *on the original grant of a lease*, must be "capital money" and not income, for the decision in *Brigstocke* v. *Brigstocke* (L. R., 3 Ch. Div. 357) would not apply to such a case (as to which, see p. 39, *supra*).

Whether section 34 applies to premiums is not quite clear. By that section it is provided, that "where capital money arising under this Act is *purchase*-money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple," the *purchase-money* is to be applied in such a manner as will give to the parties interested in the money the like benefit therefrom as they might lawfully have had from the lease, estate or interest in respect whereof the money was paid, or as near thereto as may be. A premium paid to a lessor would scarcely seem to come strictly within the meaning of the expression "purchase-money paid in respect of a lease," which rather implies money paid for an assignment of an already existing lease. On the other hand, a fine or premium seems to come within the spirit of the clause, inasmuch as it is capital money paid in respect of an interest less than the fee simple, and as such ought not in justice to go along with the inheritance. On the whole, therefore, it is submitted that the section does apply to premiums or fines paid to lessors on the granting of a lease. Trustees, however, could scarcely be advised to act upon their own responsibility in such a case, but should apply to the Court under sect. 44.

The interpretation of the expression "best rent," would seem to depend upon the circumstances of each particular case. "Where the transaction is fair, and no fine or other collateral consideration is taken by the tenant for life, and no injurious partiality shown by him in favour of the particular lease, there ought to be something extravagantly wrong in the bargain in order to set it aside on this ground, for in the choice of a tenant there are many things to be regarded, besides the mere amount of rent offered." (*Doe* v. *Radcliffe*, 10 East, 278; and see Sugd. on Powers, p. 785.)

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It should, however, be noted that the sub-section is merely directory, and is not of the essence of the power, so as to render a lease voidable in case the rent be insufficient. Sect. 54 provides that a lessee dealing with a tenant for life is, as against all parties entitled under the settlement, to be conclusively taken to have given the best rent that could be reasonably obtained. The tenant for life, however, would undoubtedly be liable under section 53, in case he made an improvident lease, inasmuch as he is bound to have regard to the interest of all parties entitled under the settlement, and is a trustee for them.

Sub-s. 3. Covenant to pay rent and proviso for re-entry.

This sub-section does not differ much from a similar provision in sect. 46 of the Settled Estates Act, 1877, except that the proviso for re-entry is to take effect on non-payment of the rent for a period of thirty, instead of twenty-eight, days. The rent may be reserved and made payable yearly, half-yearly, or quarterly. (See *Rutland* v. *Doe* d. *Wythe and Others*, 12 M. & W. 356; 10 Cl. & F. 419.)

The words of the Settled Estates Act, directing that the rent should be made incident to the immediate reversion, do not occur in the new Act; but, apart from the fact that a limited owner is always in equity a constructive trustee for all other persons interested in the property (*Keech* v. *Sandford*, 1 W. & T. Lead. Ca. 44), the 53rd section of the Act expressly declares that a tenant for life shall, in relation to the exercise by him of any power under the Act, be deemed to be in the position, and to have the duties and liabilities, of a trustee for those parties. It is clear, therefore, that the rent of lands leased by a tenant for life will go and be payable along with the immediate reversion, notwithstanding the omission of an express declaration in the Act to that effect. In addition to this it must be remembered that rent is a usual, though not inseparable, incident to a reversion where rent is reserved. The rent may be granted away reserving the reversion, and the reversion may be granted away reserving the rent, by *special* words; but by a *general* grant of the reversion the rent will pass with it as incident thereto. (See Steph. Comm. bk. 2, pt. 1, ch. 7.)

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Consequently a power to let at a rent, without more, gives no power to take away the usual incidents of the reversion, and, therefore, no power to separate the rent from it. In drafting leases under the Act, it will be best either to recite the fact that the lessor is tenant for life, and as such and under the powers of the Act has agreed to grant the lease, or else in the operative part to make him expressly grant as tenant for life under the powers of the Act. In either case the rent should be reserved generally, without saying to whom. (See *Greenway* v. *Hart*, 14 C. B. 354; and Woodfall's Landlord and Tenant, 9th ed. 345; Davidson's Prec. vol. 3, pt. 1, p. 500, note (*i*).)

Sub-s. 4. Counterpart.

So far as the original lessee is concerned, this subsection seems to be imperative, and a condition to the validity of the demise; but it does not affect an assignee of the lease who has no express notice of the defect. It is, however, apprehended that an intending assignee who received express notice that no counterpart existed would be bound by that knowledge, inasmuch as the lease itself is merely *evidence* of the execution of the counterpart, and as such liable to be rebutted.

Sub-s. 5. Facts stated in or indorsed on lease.

This is a very useful clause, and one which is calculated to save a great deal of expense, inasmuch as it practically absolves an intending lessee from the duty of seeing that the tenant for life is exercising his powers properly, and for the benefit of all parties under the settlement. All the lessee need trouble himself to ascertain is, (1) that the lessor is tenant for life, and (2) that there are none of the incumbrances affecting the property specified in sect. 20, sub-sect. 2. All other matters may be accepted on the faith of the tenant for life's statement, which should form the subject of recitals.

Building and Mining Leases.

Regulations respecting building leases.

8.—(1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having

erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with building purposes.

(2.) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(i.) The annual rent reserved by any lease shall not be less than ten shillings; and

(ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and

(iii.) The rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

Sub-s. 1. Consideration for building leases.

At first sight it would seem that all special mention of "the lessee, or some person by whose direction the lease is granted," might have been omitted, as

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the comprehensive general words, "or some other person," following without any qualification, seem to swallow up the previously indicated persons, under the rule *omne majus continet se minus*. The draftsman was, however, doubtless well advised in retaining the special words, as they tend more clearly to explain and illustrate the meaning and purpose of the clause; the lessee being in the natural course of things, and in most cases, himself the builder, and next in frequency some person who nominates him, and assigns him his interest or claim to call for a lease. It was, however, clearly inexpedient to exclude the case of any other person than the builder or his nominee being the lessee, and consequently the larger general words were added. Many such cases may be imagined, however rare they may be in practice.

Sub-s. 2. Peppercorn rent.

It is apprehended that the word "first" governs not merely the expression "five years," but also the words "any less part of the term," and that consequently the nominal rent must be confined to "all or any part of the first five years of the term of the lease," which was the more precise provision in relation to nominal rents, contained in the Settled Estates Act, 1877 (sect. 4).

Sub-s. 3. Leasing in lots.

The object of this section is to permit of a building estate being leased in lots to one lessee or his nominees; and the saving clauses are intended to prevent any lot being either grossly under-rented or grossly over-rented. Within the prescribed limits, however, a large discretion is given to the tenant for life, so long as the aggregate rents of all the lots are equivalent to the best rent which could be obtained for the whole property as one lot. The expression "ultimately payable" relates to the rent payable on the determination of the period of nominal or peppercorn rent. Under this subsection, it would not be permissible to apportion the whole ground rent among some of the lots, and to demise the rest at a peppercorn rent. (See *Cust* v. *Middleton*, 3 De G. F. & J. 33; 30 L. J., Ch. 360; 7 Jur., N. S. 151.) The tenant for life and lessee are, it will be observed, in effect (and no doubt intentionally) placed in this position, viz., that the former must stipulate, and the

latter must undertake, that such a house or building shall be erected on each lot, as that the rack-rent of the ground and house when completed shall be not less than five times the ground rent reserved by the lease. It would seem that although this proportion is expressly directed only when a building estate is let in lots, yet it will be a safe rule to adopt in the case of leases of the estate in one lot. A high ground-rent would operate as a premium to the lessee to run up large and showy, but unsubstantial, structures, which by the end of the term would probably require rebuilding. It seems strange that subsect. 3, iii. should have been limited to cases in which the land is let in lots.

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Regulations respecting mining leases.

9.—(1.) In a mining lease—

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

(ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(2.) A lease may be made partly in con-

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sideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with mining purposes.

Sub-s. 1. Royalties.

This clause seems to give to a tenant for life, full power to demise mines at a royalty, with or without a minimum rent calculable at any specified period, and with or without the customary recouping clause. Of course, however (under sect. 53), the tenant for life, in granting such leases, ought to stipulate that the minerals shall be worked in the best manner prevailing in the district, and to provide for the weighing or measuring of minerals, the production of working plans, and the keeping and inspection of books of account, &c., without which it would be impossible to check the amount of royalty payable by the lessee.

Sub-s. 2. Part of consideration may consist of improvements.

It will be observed that the improvements contemplated by this clause are limited, (1) to improvements authorized by the Act, and (2) to improvements in connection with mining purposes. Where, therefore, part of the consideration for a mining lease is the execution by the lessee of an improvement, such improvement must be an improvement in connection with mining purposes falling under some of the classes of improvements specified in the 25th section of the Act. It would seem that such improvements are limited to the following, viz.:—

(1.) Drainage of mines, including the straightening, widening and deepening of drains, streams and watercourses (sect. 25, i):
(2.) Cottages for miners (*ib.* x):
(3.) Tramways, railways, canals and docks (*ib.* xiv):
(4.) Jetties, piers, landing places, on rivers, lakes, and sea or tidal waters, for facilitating transport of minerals, and of things required for mining purposes (*ib.* xv):
(5.) Pipe making, fencing, paving, brick making, tile making, and other works necessary or proper in connection with any of the objects aforesaid (*ib.* xviii):

(6.) Trial pits for mines, and other preliminary works necessary or proper in connection with development of mines (*ib.* xix):

(7.) Reconstruction, enlargement or improvement of any of those works (*ib.* xx).

Variation of building or mining lease according to circumstances of district.

10.—(1.) Where it is shewn to the Court with respect to the district in which any settled land is situate, either—

(i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity; or

(ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit, authorize generally the tenant for life to make from time to time leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and, subject to any direction in the order of the

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Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

Sub-s. 1. Variation in terms of leases.

This provision is an enlarged version of a proviso at the end of sect. 4 of the Settled Estates Act, 1877, and sect. 18 of the same Act. Under that Act, the Court has authorized the granting of building leases of settled estates for 999 years, or in perpetuity, at a fee farm rent, upon evidence that, according to the custom of the district, that was the usual mode of disposing of property for building purposes, and that it could not be beneficially disposed of for such purposes on any other terms. (*Re Carr's Settled Estates*, 7 Jur., N. S. 1267; *Re Cross's Charity*, 27 Beav. 592.)

It is apprehended that the Court will be somewhat chary of giving *general* authorities under this section.

Fee farm rent.

The term "fee farm rent," is one to which no very certain meaning can be attached. Lord Coke seems to consider that a fee farm rent must be of at least one-fourth the value (*i. e.*, annual value) of the land (Co. Litt. 144 a); but Mr. Hargrave in his Notes to Coke on Littleton (Lib. 2, sect. 217, note 235), says: "The true meaning of *fee farm* is a perpetual farm or rent: the name being founded on the *perpetuity* of the rent or service, not on the quantum. Here, indeed, Lord Coke seems to intimate the contrary, by confining the denomination of *fee farm* to rents at least equal to the fourth part of the value of the land; and the word is explained in a like manner by Sir Henry Spelman and the author of the book of *Old Tenures*, with this difference only, that the latter restricts the value to a third. (See Spel. Gloss. voce feodi-firma, and Old Ten. tit. *fee firme*.) But it would be wrong to understand any of these writers as intending absolutely and universally to exclude all rents of less value: for the

word *fee farm* most certainly imports every rent or service, whatever the quantum may be, which is reserved on a grant in fee; and so Lord Coke himself agrees in another work, citing Britton and other books for authorities. (2 Inst. 44; Britt. 164 b.)" It, also, seems to be doubtful whether a fee farm rent can be created since the statute *Quia Emptores* except by the king, because the grantor, parting with the fee, is, by operation of that statute, without reversion: and without a reversion there cannot be a rent *service*. (Harg. Co. Litt. Lib. 2, sect. 217, note 235.) However, it is clear that the Act does not use the term fee farm in this sense, but rather in the sense of a rent *charge* secured by powers of distress and entry. As a fact, a large proportion of the lands in Lancashire are holden at fee farm rents (or what are called such) created long after the statute *Quia Emptores*. (See also note in *Bradbury* v. *Wright*, Doug. Ca. B. R. 602.)

Part of mining rent to be set aside.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

This section is a considerable extension of the third condition annexed to sect. 4 of the Settled Estates Act, 1877. It is difficult to understand the justice of setting aside one-fourth of the rent where the tenant for life is not impeachable for waste, inasmuch as under such circumstances he would be entitled at common law to work the mines for his own sole

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benefit, and this provision is therefore mulcting him of one-fourth of his legal income.

Still less can one understand why a tenant for life, who is impeachable for waste, should have to set aside three-fourths of the rents of *opened* mines, which he might work entirely for his own benefit; if, indeed, this, which is the apparent, be also the true, construction of the section. It may, however, be plausibly contended that the expression "impeachable for waste in respect of minerals" ought to be limited to the minerals the subject-matter of the lease, and that as a tenant for life is by the common law not impeachable for waste in respect of *opened* mines, he ought only to be required to set aside one-fourth of the rents of opened mines, although his estate generally under the settlement may not expressly be limited "without impeachment of waste." It is not, however, considered very probable that the Court would put such a construction on the section; but, seeing that it is (quà tenants for life of opened mines) of a restrictive nature, the tendency of the Court would be to construe it as far as possible in their favour. On the other hand, it might happen that if the construction above suggested were adopted, and a tenant for life of unopened mines granted a lease of them under this Act, a succeeding tenant for life might take advantage of the fact of their having thus become "opened mines," and might claim three-fourths of the profits, even though under the settlement generally impeachable for waste.

Contrary intention.

It is apprehended that the expression of a contrary intention in the settlement, must be limited to an *extension* of the rights of the tenant for life: *e.gr.*, it would not do to say that *all* the mining rent should be capital money.

Special Powers.

Leasing powers for special objects.

12. The leasing power of a tenant for life extends to the making of—

(i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease,

which, if made by the predecessor, would have been binding on the successors in title; and

(ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and

(iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

(i) Giving effect to predecessor's contracts.

The exact effect of this paragraph seems to be, that a tenant for life may grant a lease *beyond* the powers given by this Act, if his predecessor in title has contracted to do so, and had power so to contract; and in that case the provisions of the present Act (so far as they may be appropriate) will be applicable. For instance, supposing the predecessor, being donee of a power of leasing with certain formalities, had contracted to exercise the power, it is apprehended that under this section his successor might carry out the contract, even though the term contracted for exceeded the number of years specified in sect. 6, or the rent contracted for was less than the best rent. If this was not the intention of the framers of the Act, the above clause would seem to be mere surplusage, inasmuch as a tenant for life would not require to be *empowered* to grant a lease in accordance with a contract, if such lease were of a nature which tenants for life generally are empowered to grant.

(ii) Renewal of leases.

The same remarks apply to this clause as to the last one. If the clause is not merely declaratory, it must (it is conceived) extend to giving a tenant for

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life power to renew, plus the additional powers given to him by this Act on the making of an original lease.

(iii) Confirmation of leases.

The general rule of law (apart from statute) is that a voidable, but not a void, lease, granted by a tenant for life, may be confirmed by acceptance of rent by the remainderman. A confirmation may make a voidable or defeasible estate good; but it cannot work upon an estate that is void at law. (Co. Litt. 295 b; Farwell on Powers, 290.) A lease by a tenant for life would, under the common law, seem to be *void* as against the remainderman (Harg. Jur. Arg. 1—132), and the acceptance of rent by the latter would not therefore operate as a confirmation of it; but would merely create a tenancy from year to year on the terms of the void lease. (*Doe* v. *Watts*, 7 T. R. 83; *Doe* v. *Weller*, *ib.* 478.) The Act 12 & 13 Vict. c. 26, and the amending Act 13 Vict. c. 17, were passed for the purpose of modifying this rule of law. The effect of those statutes seems to be, that the mere acceptance of rent by a remainderman, *without more*, makes the lessee tenant from year to year on the terms of the void lease, *with the right to demand a lease* in accordance with such void lease, except so far as the latter is in excess of the terms of the power under which the tenant for life had power to make leases; but if the remainderman is willing and able to confirm the void lease without variation, the lessee is bound to accept a confirmation, and cannot insist on having a lease in accordance with the power. If, however in addition to the acceptance of rent, the remainderman gives, either upon or before the acceptance of such rent, any receipt, memorandum, or note in writing, confirming such lease, signed by the remainderman or some person by him thereunto lawfully authorized, then the acceptance of rent operates as a confirmation of the void lease. (See Farwell on Powers, 291.)

The present section of the new Act empowers a tenant for life, not merely to confirm a void lease, so as to bring it within the terms of the power under which it was intended to be created, but also to extend its terms, provided that, when so extended, it

does not exceed the general powers of the person who attempted to create it at the time of such attempted creation, whether such powers were statutory or otherwise. Sect. 12.

The object of the whole section is rather obscure; but it is conceived that it is not imperative on a tenant for life to grant a lease under clause (i) in cases where such a contract as is therein referred to, could not, under the general law, be enforced against the owner for the time being.

Surrenders.

Surrender and new grant of leases.

13.—(1.) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and

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whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

This section is an elaboration of sect. 7 of the Settled Estates Act, 1877.

Sub-s. 1. Surrender of leases.

A lease may be surrendered, for purposes of renewal, notwithstanding the existence of an underlease: for the latter will, under the provisions of the statute 4 Geo. II. c. 28, s. 6, take effect out of the new lease. (*Re Ford's Settled Estates*, L. R., 8 Eq. 309.)

Sub-s. 5. Terms of renewal.

The case of *Re Rawlins' Settled Estates* (L. R., 1 Eq. 286) exemplifies the utility of this section. There, the advice of the Court was asked whether the petitioners, as trustees of a will, ought to make, or concur in making, an application to the Inclosure Commissioners for an exchange of some of the settled property for other property adjoining it, so as to rectify the boundaries of both properties; and the sanction of the Court was at the same time sought, under the Settled Estates Act, to the proposed surrender of a lease subsisting in the settled property, and the grant of a new lease thereof on terms which were set out in the petition. It appeared that the rent proposed was adequate, *taking into consideration the value surrendered of the existing lease;* but that if the property were treated as actually in possession, a better rent might be obtained. V.-C. Wood, in making the order, said: "As to the surrender, I do not think the Act compels me so to require the best rent that the surrender must be made for nothing. To give it such a construction, must practically be

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to refuse the exercise of the power deliberately conferred by the legislature, since no one could be expected to consent to the surrender of a subsisting lease, which might be valuable, without receiving any consideration for such surrender. The Court, in sanctioning a lease under these Acts, must look to all the circumstances, and see that, on the whole, the best terms are made for the benefit of the persons interested under the settlement, which can reasonably be had, whether by means of obtaining a surrender or otherwise." A tenant for life, acting under the powers conferred by the above section of the new Act, should pursue the course heretofore adopted by the Court in sanctioning the taking of a less rent, in consideration of the surrender of a subsisting lease.

Copyholds.

Power to grant to copyholders licences for leasing.

14.—(1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

By the general custom of all manors, a copyholder can make a lease for any number of years with the licence of the lord; and even without that licence he may demise from year to year; but, in the absence of special custom, he cannot do more than this (Coke

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Cop. s. 44; *Luttrell* v. *Weston*, Cro. Jac. 308; *Fresel* v. *Welsh*, *ib.* 403; Scriv. Cop. 459). A lord, however, who is a limited owner, can (apart from the above powers, or some power in a settlement of the seigniory) only grant a licence to make leases determinable with his own interest, and therefore a lease for years made by licence of a lord who is only tenant for life, has hitherto (apart from express power) ceased at his death (1 Cruise T. 10 C. 3; 2 Sm. R. & P. Prop. 699, 4th ed.). The Settled Estates Act, 1877, s. 99 (re-enacting 21 & 22 Vict. c. 77, s. 3), gave a somewhat similar power, but of course it was limited (except by leave of the Court) to licences to grant occupation or agricultural leases for twenty-one years or less. The new Act, however, extends the powers to all leases which a tenant for life can grant, and will doubtless prove a very useful provision.

The term authorized by a licence must not be exceeded, or the lease will be void *in toto* (*Jackson* v. *Neal*, Cro. Eliz. 394); but, on the other hand, the lease need not be for the whole of the permitted term (*Goodwin* v. *Langhurst*, Cro. Eliz. 535). A lease once validly granted may be validly assigned without further licence.

It is noticeable that by sect. 56 of the Settled Estates Act, 1877, it is expressly enacted that nothing in that Act shall authorize the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of the manor without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor. One would have expected to find a similar clause in the new Act, but in fact there is none. However, the section to which this note is appended, seems clearly to imply that a licence is still required; and sect. 20 (*infra*), giving power to the tenant for life to create the lease, limits his power to binding persons claiming through the settlor, and therefore clearly gives him no power to bind the estates or rights of the lord who claims paramount to the settlement.

V.—Sales, Leases, and other Dispositions.

Mansion and Park.

Restriction as to mansion house, park, &c.

15. Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court.

"Principal mansion house."

The phraseology of this section is taken from the 46th section of the Settled Estates Act, 1877.

The expression "principal mansion house," is one which will, it is apprehended, cause considerable difficulty. In the case of great landed estates, there will doubtless be but little room for hesitation in saying which is the principal mansion house, unless, indeed, several large estates, each having a mansion house, are included in one settlement—a state of things which is very unusual. The Act, however, is not confined to large estates, but embraces all settled land, however small its area, and whatever its nature. A great deal of house property in London, for instance, is settled. Is a house in a London street, which may happen to be settled, and which may also be inhabited by the tenant for life, to be considered a "principal mansion house"? Would Stafford House, for instance? If so, why not a house in Curzon Street? And, if a house in Curzon Street, why not one in the Clapham Road, and so downwards? The value of the late Northumberland House was half a million sterling. Such a house would certainly in ordinary language be considered a principal mansion house; and yet, if so, it is difficult to draw the line. If in a settlement of Northumberland House and its appurtenances, the house is to be considered "the principal mansion house on the settled land," it is difficult to see why, in a settlement of Acacia Villa and its appurtenances,

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the Villa should not be considered "the principal mansion." It would be rash to predict what meaning the Court will attach to the expression. It is possible that it may confine it to the principal mansion house on a manor or lordship, or perhaps to the mansion house attached to a landed estate, as distinguished from house property. The probability is, however, that the Court will refuse to lay down any general rule, but will say in each particular case whether the house in question is or is not a principal mansion house.

It is, however, suggested with diffidence, that, under the dictum in *Re Venour's Estate, Venour* v. *Sellar* (L. R., 2 Ch. D. 522), the marginal note to the section may be resorted to, to elucidate the meaning of the clause. That note couples the mansion house with the word "park,"—a word which does not occur in the section itself, and seems to suggest that the expression "mansion house" is intended to be confined to what are commonly known as *country seats*. That this is a fair construction, is supported by the definition of mansion house in Ogilvie's Imperial Dictionary, as "the lord's house in a manor." With regard to the expression "the demesnes thereof, and other lands usually occupied therewith," it is apprehended that the phrase embraces the gardens, park and home farm (if any). *Demesne* is said to be derived from *meisan, maison*—a house: and means "a manor house, and the lands adjacent or near, which a lord holds in his own hands or immediate occupation for the use of his family, as distinguished from his tenemental lands distributed among his tenants." (Ogilvie's Imperial Dict.) Wharton, too, in his Law Lexicon, defines "demesne" as—"That part of the land of a manor which the lord has not granted out in tenancy, but which is reserved for his own use and occupation."

Demesnes, &c.

It may be added that the use of the word *demesne* in connection with *mansion house*, gives additional colour to the supposition that the latter expression was intended to be confined to country seats or manor houses.

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The Court in *Re Duchess of Cleveland's Estate* (22 W. R. 818) refused to sanction a lease for even seven years of the mansion house and demesnes (although the remainderman assented, and the tenant for life had not the means to keep it up), on the ground that there was an *express direction* in the settlement that the mansion should not be let. It is apprehended, however, that such a declaration would no longer influence the Court in a similar case.

Streets and Open Spaces.

Dedication for streets, open spaces, &c.

16. On or in connexion with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof,—

(i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connexion therewith; and

(ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of

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streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and

(iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be inrolled in the Central Office of the Supreme Court of Judicature), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

The general scope of this section is in accordance with sect. 20 of the Settled Estates Act, 1877; but the power thereby vested in the Court is now given to the tenant for life. The new Act, however, is not so general in its terms as the Settled Estates Act, restricting the dedication of lands for the specified purposes to cases where the tenant for life is selling or leasing settled land for building purposes. The former Act had no such restriction; but under it the Court held that it was only warranted in sanctioning dedications of this kind in cases where there is an immediate benefit to the property in its state at the time of the application. (*Re Hurles' Settled Estates*, 2 H. & M. 203; *Re Chambers*, 28 Beav. 653.)

Surface and Minerals apart.

Separate dealing with surface and minerals, with or without way-leaves, &c.

17.—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and

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in any such case with or without a grant or reservation of powers of working, way-leaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

This section is founded on the 2nd section of the Confirmation of Sales Act, 1862 (25 & 26 Vict. c. 108), by which it was enacted that, "Every trustee and other person now or hereafter to become authorized to dispose of land by way of sale, exchange, partition, or enfranchisement, may, unless forbidden by the instrument creating the trust or power, so dispose of such land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting or carrying away of such minerals, or may (unless forbidden as aforesaid) dispose of by way of sale, exchange, or partition, the minerals, with or without such rights or powers, separately from the residue of the land; and in either case without prejudice to any future exercise of the authority with respect to the excepted minerals or (as the case may be) the undisposed-of-land; but this enactment shall not enable any such disposition as aforesaid *without the previous sanction of the Court of Chancery* to be obtained on petition in a summary way of the trustee, or other person authorized as aforesaid, which sanction once obtained shall extend to the enabling from time to time of any disposition within this enactment of any part or parts of the land comprised in the order to be made on such petition, without the necessity of any further or other application to the Court."

It will be observed that the essential difference

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between the above-quoted enactment and the new Act is, that, under the latter, a declaration in the settlement to the contrary will be of no avail, and that the leave of the Court will be no longer necessary.

Mortgage.

Mortgage for equality money, &c.

18. Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act.

It will be observed that this power is confined to cases in which money is required for enfranchisement, or for equality of exchange or partition. By sect. 47 the power is extended to raising money for payment of costs, but is then only exerciseable by direction of the Court.

Money required for *improvements* can only be raised by sale of the settled lands, or else by way of charge under the provisions of the Improvement of Land Act, 1864.

It has been suggested in the press that this is an oversight, but the framers of the Act considered that a power to mortgage for improvements might be a temptation to a tenant for life to incumber the estate recklessly, whereas, if he has to absolutely sell part of the land to raise money for that purpose, he will think twice before doing so.

The provision that money so raised shall be "capital money," is intended no doubt to make it necessary that it should be paid by the mortgagee into Court, or to the trustees under sect. 22. It cannot, however, be *applied* as capital money under sect. 21, inasmuch as it can only be raised when

required "for enfranchisement, or for equality of exchange or partition," and must, therefore, under sect. 21, be applied for "the special authorized object for which" it was raised.

Undivided Share.

Concurrence in exercise of powers as to undivided share.

19. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

It would seem that this section is merely declaratory. (*McCarthy* v. *Whieldon*, 34 Beav. 107.)

Conveyance.

Completion of sale, lease, &c., by conveyance.

20.—(1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

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(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(i.) All estates, interests, and charges having priority to the settlement; and

(ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and

(iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copy-

hold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the court rolls. Sect. 20.

Sub-ss. 1 and 2. Conveyance of lands by tenant for life.

This section and section 55, sub-sect. 2, afford the requisite legal machinery by which the powers of sale, exchange, partition, leasing and mortgage, given to the tenant for life in preceding sections, are to be carried out. Unless some such machinery were provided, the tenant for life (although the person to sell) would have been obliged to get the joinder of the parties in whom the legal fee was vested. Under this section, however, he is empowered to *convey* or *demise* the settled land for the estate and interest which he has been by previous sections empowered to sell or lease, and by such conveyance or demise not merely to pass the estate which he himself has, but also all estates created by the settlement or any less estate This power is somewhat similar to the power given to tenants for life to convey the fee-simple of lands, by the Lands Clauses Consolidation Act, 1845, s. 7. Under that Act, however, it was decided by V.-C. Kindersley in *Lippincote* v. *Smyth* (8 W. R. 336; 29 L. J., Ch. 520), that the concurrence of trustees in whom the legal fee was vested, was necessary in a conveyance by the equitable tenant for life. It is,

Legal estate in trustees.

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however, clear, that even supposing that case was rightly decided (which may be doubted), no such question could arise under the present Act. For first, we have the express words "including copyhold or customary or leasehold land *vested in trustees*," which is conclusive as regards lands of those tenures. Then sub-sect. 2 enacts that, "such a deed . . . . is effectual to pass the land conveyed, ... discharged from all limitations, &c., ... and from all estates, &c. created by the settlement," including, of course, the estate of the trustees. Then, referring to sect. 2, sub-sect. 5, the definition there given of the *tenant for life*, is "the person *beneficially* entitled to possession of settled land for his life," which, of course, includes an *equitable* tenant for life. Finally, if any doubt remained, a reference to sect. 58, which defines the persons who are to have the powers of a tenant for life, includes among them (paragraph ix.) a person only "entitled to the *income* of land under a *trust* or direction for payment thereof to him during his own or any other life," and even though it be "subject to expenses of management," &c. The fact, too, that the steward of a manor is to admit a purchaser of copyholds on the production of the conveyance, shows that where the land is vested in trustees, no surrender by them is necessary.

Railway companies and other bodies buying under Lands Clauses Acts.

It may be here pointed out, that one incidental result of the Act will be to enable railway companies and other bodies purchasing land under the powers of the Lands Clauses Acts from persons under disability, to pay the money to the trustees without the necessity and expense of paying it into Court. Hitherto, it has been extremely troublesome for railway companies to deal with tenants for life, and even with trustees for sale where there is a prior life tenancy given and the sale is directed to be made *on the death of the life tenant*. In such cases, the trust for sale could not be accelerated (*Want* v. *Stallibras*, L. R., 8 Ex. 175); and although the trustees could *convey* the estate under the Land Clauses Act, yet as they were obliged to convey under that Act and not under their trust, they could not give good receipts for the purchase-money, which

consequently had to be paid into Court, and invested, and the income paid to the tenant for life, and the corpus paid out to the trustees on the tenant for life's death, a course of procedure very costly to the railway company. Henceforth this will be avoided, and trustees (when coming within the definition of trustees in this Act) will be able to give good discharges for the purchase-money. Sect. 20.

This sub-section is intended to obviate the necessity of a surrender by the tenant on the rolls; but in order to prevent an admission being wrongly made by the steward, he is empowered to call for the title of the person purporting to execute the powers conferred by the Act, in order that he may be satisfied that such person *is* a tenant for life within the meaning of the Act. Whether this sub-section casts any *duty* on the steward to investigate such title carefully, *quære.* The sub-section generally is analogous to sect. 270 of the Lands Clauses Consolidation Act, 1845, by which copyhold lands are conveyed to railway companies, not by surrender and admittance, but by a deed of conveyance; but, under the new Act, the legal title of the purchaser is not complete without admittance. Railway companies, and other bodies governed by the above-mentioned Act, will still therefore take conveyances of copyholds under its provisions. Sub-s. 3. Conveyance of copyholds.

VI.—Investment or other Application of Capital Trust Money.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely): Capital money under Act; investment, &c. by trustees or Court.

(i.) In investment on government secu-

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rities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:

(ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land:

(iii.) In payment for any improvement authorized by this Act:

(iv.) In payment for equality of exchange or partition of settled land:

(v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land:

(vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life:

(vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land:

(viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes:

(ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge:

(x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act:

(xi.) In any other mode in which money produced by the exercise of a power

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of sale in the settlement is applicable thereunder.

"Capital money."

For definition of capital money, see p. 32, *supra*, and notes thereon, p. 39, *supra*.

"Government securities."

It is conceived that this expression must be limited to British and Indian government securities.

Local Loans Act.

It would seem that the trustee provisions of the Local Loans Act, 1878, will apply to capital money.

Purchase of "seignory."

Paragraph (v.), refers to *customary freeholds*, and lands held by the tenure of *ancient demesne*.

The general incidents of customary estates are the same as those of ordinary copyholds; but they are not said to be held "at the will of the lord." Seeing, however, that this last phrase is now a mere fiction, the difference between pure copyholds and customary freeholds is not very important.

It would seem at first sight, that the seignory to be purchased must relate exclusively to the *settled land*, and not be a mere seignory or lordship of a manor generally; but it is conceived that this is not so, inasmuch as paragraph (vii.) authorizes the investment of capital money in *land*, which is defined in sect. 2 (p. 32, *supra*) as including incorporeal hereditaments, and is thus made synonymous with "hereditaments," which last term clearly includes the lordship of a manor.

Purchase of lands.

It must be remembered, that by sect. 23 the investment of capital money in the purchase of lands is limited to lands *in England*, where the capital money arises from settled land in England. On the other hand, there is nothing to prevent capital money arising from Irish land being applied in the purchase of land in other parts of the kingdom; but it is conceived that the Act could not be construed to permit of the purchase of land out of the kingdom in any case.

Wales included in England.

It must be borne in mind that the word "England" in Acts of Parliament includes Wales. (20 Geo. 2, c. 42, s. 3.)

Leaseholds for 60 years.

The power given to the tenant for life to invest in leaseholds where there is an unexpired term of sixty years, is a very strong provision, enabling, as it

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does, the tenant for life to invest the settled estate in a wasting property. It looks at first sight as if the investment once made, might be retained until the term expired; but this is by no means free from doubt. In the first place, the provision that there must be at least sixty years of the term to run, looks as if the framers of the Act intended that the investment should be merely of a temporary character. Then by sect. 53 the tenant for life must (in exercising his powers) *have regard* to the interest of all parties entitled under the settlement, and is, in relation to the exercise thereof by him, to be deemed to be in the position, and to have the duties and liabilities, of a trustee for those parties.

It would seem, therefore, that it would be his duty to sell the leasehold lands within such a period as will prevent any loss of capital to the settled estate, just as it is the duty of trustees who are authorized to lend money on leasehold security to see that they call in the trust funds before the security becomes deteriorated. The fact that the Act is so strict in preventing a tenant for life from wasting the estate in relation to mines and to timber (sects. 11 and 35), seems conclusively to show that it was not the intention of the legislature that a tenant for life should be empowered to change a freehold estate into a leasehold one, which would be entirely lost in the course of sixty years. (See *Raby* v. *Ridehalgh*, 7 De G., M. & G. 104; but consider *Cadogan* v. *Essex*, 2 Drew. 227; and *Beauclerk* v. *Ashburnham*, 8 Beav. 322.)

Payment to person absolutely entitled.

It seems that a tenant in tail would not be a person "absolutely entitled" under paragraph (ix.), unless he executed a disentailing deed. (*Re Broadwood's Settled Estates*, L. R., 1 Ch. D. 438; *Re Reynold's*, L. R., 3 Ch. D. 61; but see contrà, *Re Wood's Settled Estates*, L. R., 20 Eq. 372.)

It is presumed that before paying over the purchase-money to a person entitled to an absolute legal estate in settled land, the trustees might, and the Court would, require in the one case a statutory declaration, and in the other an affidavit, that there were no incumbrances. (See *Thornhill* v. *Millbank*, 12 W. R. 523.)

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Regulations respecting investment, devolution, and income of securities, &c.

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and

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go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

Sub-s. 1. Power of tenant for life.

It will be observed, that it is at the option of the tenant for life whether the money is to be paid into Court or to the trustees of the settlement. It is, however, obviously to the interest of the tenant for life to have the money paid to the trustees: for not only will considerable expense be thus saved, but the trustees are *required* to apply the money according to the *directions* of the tenant for life: whereas, when it is paid into Court, it is to be applied on the *application* of the tenant for life: an expression which seems to give the Court a judicial discretion in the matter.

Sub-s. 2. Investments in the name and under control of trustees.

It is conceived that the direction that any investment shall be in the names and under the control of the trustees, merely refers to investments strictly so called, and not to applications of capital money in the *purchase* of property. This seems evident from sect. 24, which deals with such matters, and from the fact that the section to which this note is appended speaks throughout of "investment *or other application*," until the last sentence of sub-sect. 2, where it merely states that any *investment* shall be in the names or under the control of the trustees.

Sub-s. 7. Sale of securities.

Although the Act does not say so, it is conceived that the trustees would be bound to sell securities at the request of the tenant for life, and to apply the

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money arising therefrom as capital money arising under the Act.

Investment in land in England

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same.

England includes Wales. (20 Geo. 2, c. 42, s. 3.)

Settlement of land purchased, taken in exchange, &c.

24.—(1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person

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who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to

Sect. 24. easements, rights, and privileges over and in relation to land.

This section is modelled on sect. 4 of Lord Cranworth's Act (23 & 24 Vict. c. 145), which is repealed by the present statute. It is, in fact, the usual clause contained in settlements by which a power of sale is vested in trustees.

Sub-s. 3. Copyhold, customary and leasehold hereditaments.

The reason why copyhold, customary and leasehold land is to be conveyed to the trustees, is, because the Statute of Uses does not apply to such lands, and, consequently, it would be generally impossible to convey them for the exact *legal* estates subsisting in respect of settled freeholds; and also, because leaseholds are personal estate, and not heritable.

Sub-s. 4. Substituting charges.

This sub-section extends the provisions of sect. 5 (*supra*) to lands brought into settlement, as well as to those originally settled.

VII.—Improvements.

Improvements with Capital Trust Money.

Description of improvements authorized by Act.

25. Improvements authorized by this Act are the making or execution on, or in connexion with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

(i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses:

(ii.) Irrigation; warping:

(iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure:

(iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water:

(v.) Groynes; sea walls; defences against water:

(vi.) Inclosing; straightening of fences; re-division of fields:

(vii.) Reclamation; dry warping:

(viii.) Farm roads; private roads; roads or streets in villages or towns:

(ix.) Clearing; trenching; planting:

(x.) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not:

(xi.) Farmhouses, offices, and out-buildings, and other buildings for farm purposes:

(xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise:

(xiii.) Reservoirs, tanks, conduits, water-courses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption:

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(xiv.) Tramways; railways; canals; docks:

(xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes:

(xvi.) Markets and market-places:

(xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land:

(xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid:

(xix.) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines:

(xx.) Reconstruction, enlargement, or improvement of any of those works.

The improvements above specified are a consider-

able extension of those allowed by the Improvement of Land Act, 1864. (See *supra*, p. 7.) Sect. 25.

These improvements can only be paid for by capital money raised by sale, leasing, cutting of timber, exchange, or partition. There is no power given by the Act to mortgage settled land in order to raise money for improving the residue. However, this can be done under the Improvement of Land Act, 1864, by leave of the Land Commissioners, and in that case the above list of improvements is to be read along with the list in the Improvement of Land Act. (Sect. 30, *infra*; and see note to sect. 18, *sup.* p. 70.)

Approval by Land Commissioners of scheme for improvement and payment thereon.

26.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

(i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be

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conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on

(ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on

(iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

It will be perceived that the tenant for life cannot apply capital money in payment for improvements, unless either the trustees or the Court approve his scheme. Where the approval of the Court is sought, it should, it is conceived, be applied for on summons, as an administrative question of this nature can be

dealt with in chambers more conveniently than in open Court. Sect. 26.

The Land Commissioners have no power to veto an improvement approved by the trustees or the Court. All they have to do is to certify (1) that the improvement is properly executed; and (2) the proper amount which is payable in respect of it. In fact, they are apparently placed in the position of an architect under a building contract.

Probably the most usual mode of carrying out an improvement under the Act will be for the tenant for life and trustees to agree as to the nature of the improvement, and for a surveyor, approved by the commissioners, to certify that it is well executed, and what money is payable in respect of it.

Where the capital money is in Court, and more than 300*l.* is to be paid out for improvements, it is apprehended that the application under sub-sect. (3) for payment out of Court should be by petition, and in other cases by summons, in accordance with the usual practice of the Court in relation to payment of money.

Concurrence in improvements.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorized by this Act, or in contributing to the cost thereof.

This is a useful provision. Without it, it would have always been necessary for the person concurring to consider whether such joinder or concurrence was clearly for the benefit of the trust estate. (See note to sect. 4, p. 44, *supra*.)

Obligation on tenant for life and successors to maintain, insure, &c.

28.—(1.) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Land Commissioners

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by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the commissioners by certificate in any case prescribe.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his

successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act. Sect. 28.

Sub-s. 1. "During such period," &c.

The wording of sub-sect. (1) is somewhat ambiguous. It would seem, on the face of it, as if it were intended, that where the Land Commissioners do not prescribe any period during which the tenant for life is to maintain improvements, he will not be liable to do so at all. If it is answered that it would be the duty of the commissioners to prescribe a period in every case, it may be rejoined, that in some cases the question of improvements will never come before the commissioners at all (*e. g.* where the improvements are paid for under an order of the Court). It is, however, conceived that, in the absence of any order of the commissioners, the ordinary law of waste would apply, and the tenant for life be liable for permissive waste. In fact, it is difficult to conceive cases in which the commissioners ought rightly to prescribe any period less than the life of the limited owner.

The section generally is analogous to sects. 72 and 74 of the Improvement of Land Act, 1864; but these sections did not limit the period of maintenance and insurance, as the present enactment does.

Sub-s. 2. Timber planted for improvement not to be cut.

Sub-sect. (2) seems to be somewhat inconsistent with sect. 35. It is difficult to see why timber planted by way of improvement should not be cut when mature, as well as timber which was on the settled land when it was first settled. However,

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seeing that settlements rarely last for more than one generation, the point is not of very great importance; because timber planted by a tenant for life would scarcely be mature before the estate was re-settled, and when the estate was re-settled the timber would no longer be an improvement made with capital money arising under the then existing settlement.

Execution and Repair of Improvements.

Protection as regards waste in execution and repair of improvements.

29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorized by this Act, or inspect, maintain and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

The object of this section is to provide that certain acts, which are technically acts of waste, shall be allowable when done for the purpose of making improvements under this Act. It is doubted whether the section refers not only to improvements paid for

out of capital money, but also to improvements paid for by the tenant for life out of his own pocket. (See sect. 55, sub-sect. 3.) Sect. 29.

Improvement of Land Act, 1864.

30. The enumeration of improvements contained in section nine of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorized by this Act. Extension of 27 & 28 Vict. c. 114, s. 9.

This section enables a tenant for life to *borrow* money for making any of the improvements specified in sect. 25, and to charge it on the estate, but only under the supervision of the Land Commissioners, with the safeguards provided by the Improvement of Land Act, 1864.

The object of the present Act is rather to encourage improvements being paid for by moneys raised by sale, rather than by mortgage, of the property. Incumbered estates are to be discouraged; and if a man wishes to burden his property with debt for the purpose of improving it, he must first obtain the sanction of the Land Commissioners under the Act of 1864.

VIII.—Contracts.

31.—(1.) A tenant for life— Power for tenant for life to enter into contracts.

(i.) May contract to make any sale, exchange, partition, mortgage, or charge; and

(ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the set-

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tled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and

(iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and

(iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted (*sic*); and

(v.) May enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same; and

(vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

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(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

This section is intended to give the tenant for life power to *contract* to exercise the powers of the Act, so as to make not merely himself and his representatives liable for breach of contract, but so as to bind those taking the property in remainder. Under the Settled Estates Acts there was no power of this kind; and consequently, unless the power of leasing was actually and formally executed, the intended lessee could not enforce a contract for a lease after the death of the tenant for life, inasmuch as the mere contract of the latter was not binding on the remainderman. (See *Hope* v. *Lord Cloncurry*, 8 Ir. Rep. Eq. 555.)

Sub-s. 1. Power to contract to mortgage.

The first paragraph of sub-sect. (1) is couched in rather wide terms, giving *primâ facie* power to a tenant for life to contract to mortgage generally, which contract, by sub-sect. (2), is to be binding on

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the property. It is, however, apprehended that the words must be read in connection with what has gone before, and that the power to contract to mortgage the settled land must be limited to such mortgages as a tenant for life is empowered to make by sect. 18. This seems to be clearly so, otherwise sect. 18 would be quite superfluous.

Sub-s. 2. Contracts enforceable against successor.

A question may arise under sub-sect. (2), whether, in the case of a contract entered into by a tenant for life under the powers conferred by the Act, an action for damages for breach of contract could be brought against his representatives in case of his death. It is conceived that it could not, inasmuch as he would have committed no breach; for the breach would be committed by his successor, on whom, by the Act, the contract devolves.

In fact, it would appear that a tenant for life, contracting under the Act, does so rather in the character of *agent* for all parties interested than as principal; and if this be so, the general rules of law applicable to contracts by declared agents would seem to apply to tenants for life expressly contracting as such. At all events, practitioners would do wisely to see that their clients who are tenants for life contract *expressly* as such, and under the powers conferred on them by the Act.

Sub-s. 3. Enforcing contract.

Sub-sect. (3) seems to confirm the view above expressed, and to require the tenant for life to obtain the leave of the Court before commencing or defending proceedings in respect of a contract entered into by him in relation to the settled land. The sub-section is really supplemental to sect. 36.

Sub-s. 4.

Quære, whether the word *granted* in the last line of this sub-section is not a clerical error for *surrendered*.

IX.—Miscellaneous Provisions.

Application of money in Court under Lands Clauses and other Acts.

32. Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the com-

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8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18. 40 & 41 Vict. c. 18.

mencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court.

This is a most salutary provision, as heretofore, money in Court under any of the Acts above referred to, could only be laid out in the strict manner prescribed by the statute under which it was paid in. The application to the Court, to have the money applied under this section, will be by petition, intituled in the special matter, and in the matter of the statute under which the money was paid into Court, and also in the matter of the present Act.

Application of money in hands of trustees under powers of settlement.

33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

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Application of money paid for lease or reversion.

34. Where capital money arising under this Act is purchase-money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

This section is taken from sect. 37 of the Settled Estates Act, 1877. It seems to cast a somewhat delicate duty on trustees; but it is conceived that a competent and practical accountant or actuary, would find no difficulty in determining the proper mode of applying capital money under the section. Trustees should therefore obtain the advice of such persons; and where the money is in Court, any application respecting it should be supported by the affidavit of one or more such persons. Whether this section applies to fines and premiums, taken for *granting* leases, *quære* (see p. 39, *supra*).

Where the settlement is a trust for sale of leaseholds, it is apprehended that the capital money will not come within the provisions of this section, as the direction to sell, shows an intention to capitalize the term for the benefit of all parties.

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Cutting and sale of timber, and part of proceeds to be set aside.

35.—(1.) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

Hitherto, timber could only be sold by leave of the Court under sect. 16 of the Settled Estates Act, 1877, and the purchase-money was wholly treated as capital. The present section is a relaxation to this extent, that although the assent of the trustees or the Court is made essential, yet one-fourth of the proceeds goes to the tenant for life absolutely.

Proceedings for protection or recovery of land settled or claimed as settled.

36. The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

This enactment is a slight extension of the repealed sect. 17 of the Settled Estates Act, 1877. Its object is to relieve limited owners from the risk of having

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to bear personally a portion, or the whole, of the costs of proceedings for the protection of the inheritance. The key-note of the clause is the word "protection," which is capable of very wide interpretation, and is, it is apprehended, capable of covering all proceedings proper for preventing any possible injury to the inheritance; such as waste, foreclosure, breach of contract, bills seeking compulsory powers, and all matters prejudicially affecting the inheritance. The form of making the application is by petition.

Heir-looms.

37.—(1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court.

Hitherto, in the absence of express powers conferred

by the settlement itself, there has been no means by which heirlooms could be sold. (*D'Eyncourt* v. *Gregory*, L. R., 3 Ch. D. 636.) Sect. 37.

This want has been found to be a fertile source of inconvenience, particularly where the heirlooms consisted of fitted furniture, useless apart from the house to which it belonged.

X.—Trustees.

38.—(1.) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act. Appointment of trustees by Court.

Wheelwright v. Walker 52 L.J. Ch. 274.

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

It will be perceived that where there never have been any trustees of a settlement, it is necessary to apply Cases where there

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never were trustees.

to the *Court* to appoint some. The reason of this is clear. If the power of appointing trustees were vested in the tenant for life, he might appoint mere dummies; whereas, the intention of the legislature was, that there should always be two trustees who should be, as it were, moral constables, to watch over the interests of the remainderman, and to take action in case the tenant for life should indicate any intention of committing a breach of trust or fraud prejudicially affecting his successors in title. As to the necessity of giving trustees notice of any intended exercise by a tenant for life of the powers conferred on him by the Act, see sect. 45, and notes thereto.

Cases where there originally were trustees.

It seems clear that, save on a *first* appointment of trustees where there never were any before, the power of appointing new trustees conferred by the 31st section of the Conveyancing and Law of Property Act, 1881, is applicable.

Mode of application.

It is conceived that the practice of the Court under the Trustee Act, 1850, will be applicable to the appointment of trustees under the present section, and that consequently the application should be made by way of petition, intituled "In the matter of the Settled Land Act, 1882, and also in the matter of the particular settlement." Under the Trustee Act, it is generally necessary to serve all persons beneficially interested, or else to make them petitioners (*Re Fellowes*, 2 Jur. 62); and it seems only reasonable that that practice should be followed in applications under the new Act.

Number of trustees to Act.

39.—(1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee.

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing

trustees or trustee of the settlement for the time being. Sect. 39.

This section is in accordance with the general practice of the Court, which almost invariably refuses to entrust money to the keeping of one trustee. It will be perceived, however, that, when coupled with sect. 40, this section authorizes the payment of capital money to the executors and administrators of a last surviving trustee, provided that such executors or administrators consist of more than one person. Payment to representatives of last surviving trustee.

It is also clear that capital money, *once paid* to two trustees, may legally remain in the hands of a sole survivor, subject to the right of any person to apply for the appointment of a new trustee under sect. 38.

Persons dealing with tenants for life under the powers of the Act must bear in mind that, under this section, a sole trustee will have no power to give a good discharge for capital money (see sect. 40, *infra*). This fact may possibly cause some embarrassment to lessees of mines, inasmuch as certain proportions of the rents are (under sect. 11) to be set aside as capital money, and therefore (under sect. 22) will have to be paid either to the trustees or (at the option of the tenant for life) into Court. Persons paying capital money.

Supposing that there should happen to be only one trustee, and the tenant for life refuses to sanction the payment into Court of the capital money, the lessee may find himself in a somewhat awkward situation; as he certainly ought not to pay the capital money to the tenant for life, and yet, in the absence of two trustees, there will be no one who can give him a good receipt for it; and there is no power enabling a lessee to apply to the Court.

40. The receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid Trustees' receipts.

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or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

This section seems to afford a complete protection to persons dealing with a tenant for life under the Act, so long as there are two persons capable of receiving capital money under the Act. It must be borne in mind that the expression "the trustees of a settlement" does not comprise the ordinary trustees of such an instrument, but only trustees with power of sale of settled land, or with power of consent to, or approval of, the exercise of such a power of sale, or, if under a settlement there are no such trustees, then the persons, if any, for the time being who are by the settlement declared to be trustees thereof for the purposes of the Act (sect. 2, sub-sect. 8).

Protection of each trustee individually.

41. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

Compare this section with 22 & 23 Vict. c. 35, s. 31.

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Lord St. Leonards' Act.

Under the ordinary law, a trustee is not answerable for the receipts, acts or defaults of his co-trustee, save only:—

Ordinary law as to trustee's liable for co-trustee.

(a) Where he has handed the trust property to him without seeing to its application;

(b) Where he allows him to receive the trust property without making due inquiry as to his dealing with it; and

(c) Where he becomes aware of a breach of trust either committed or meditated, and abstains from taking the needful steps to obtain restitution and redress, or to prevent the meditated wrong (*Wilkins* v. *Hogg*, 3 Giff. 116; 8 Jur., N. S. 25).

Effect of section as to liability for co-trustee.

It is conceived that the effect of the above section, in reference to the liability of a trustee for the acts or defaults of his co-trustee, is to limit it to the circumstances stated in paragraph (c). The circumstances specified in paragraphs (a) and (b) could scarcely be said to constitute cases of *wilful* default, an expression which seems to imply a certain amount of voluntary and *conscious* neglect of duty, and not mere apathetic carelessness.

Liability for acts of banker or broker.

The ordinary law with regard to the liability of a trustee for the acts or defaults of a broker or banker is, that he will be liable where he has *unnecessarily* left trust moneys in their hands, when he ought to have invested them; or where he has paid money to a banker or broker for investment, and has neglected for some time to make inquiries as to such investment (*Challen* v. *Shippam*, 4 Hare, 555; *Rehden* v. *Wesley*, 29 Beav. 313; *Matthews* v. *Brise*, 6 Beav. 239).

Effect of section as to liability for broker, banker, &c.

It is conceived that the present section in relation to brokers and bankers is little more than declaratory, and does not relieve a trustee from his legal liability for negligently allowing trust funds to remain unnecessarily in a stranger's hands (see *Rehden* v. *Wesley*, *ubi supra*).

Liability for solicitor.

The present section seems to exempt a trustee from liability for the negligence of his solicitor. Hitherto the law has been very harsh in this matter, holding that trustees were liable for the negligence or professional inaptitude of their solicitor, if loss was there-

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by caused to the trust estate. Why this should have been so is far from clear, except in cases where a trustee has *committed* some breach of trust through the ill advice of his solicitor, a matter which is vastly different to an omission in the conduct of some legal inquiry which the trustee was not competent to undertake, and which he was morally obliged to entrust to a solicitor. However, the late Lord Romilly, in *Hopgood* v. *Parkin* (L. R., 11 Eq. 70), held that a trustee was clearly liable for the acts and defaults of his solicitor; and probably the case would be supported, notwithstanding a decision of V.-C. Bacon to the contrary (*Re Bird*, L. R., 16 Eq. 203).

The present section, however, seems clearly to meet the case, as loss arising from the act or neglect of a solicitor can scarcely be said to arise from the trustee's own wilful default, provided he be guilty of no personal neglect or want of good faith in entrusting the matter to a solicitor whose skill he had reason to doubt.

Protection of trustees generally.

42. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to con-

vey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease. Sect. 42.

This clause relieves the trustee from investigating closely the exercise of his powers by a tenant for life. So long as the tenant for life *purports* to exercise his powers properly, they need not make strict inquiries to ascertain his *bona fides*. It is, however, confidently apprehended that where the tenant for life is about to commit an obvious breach of trust (and *à fortiori* where he is *primâ facie* overstepping the powers conferred by the Act), then the trustees would be liable if they knowingly acquiesced.

It will be observed that the word fine is mentioned in connection with purchase-money in this section, which shows that a fine is intended to be capital money. (See p. 39.)

43. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them. Trustees re-imbursement.

This section is merely declaratory of the ordinary law. (See *Worral* v. *Harford*, 8 Ves. 8; *Morrison* v. *Morrison*, 4 K. & J. 458; *Walters* v. *Woodbridge*, L. R., 7 Ch. Div. 504.)

44. If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court Reference of differences to Court.

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may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit.

Except in small matters, these applications would be most conveniently made by way of petition. In trifling cases, a summons may be resorted to.

Notice to trustees.

45.—(1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to in-

quire respecting the giving of any such notice as is required by this section. Sect. 45.

It is clear that where there originally were trustees of the settlement within the meaning of the Act, the tenant for life will not be able legally to exercise the powers of the Act without giving the notice required by this section; and that if such trustees, or all but one of them, are dead, it will be incumbent on the tenant for life to get new ones, or a new one, appointed. This seems clear from sub-sect. 2, because, if, where there is *one* trustee another must be appointed in order to make the notice valid, *à fortiori* where there are no longer *any* trustees left, it will be necessary to get some appointed. Cases where there always were trustees of the settlement.

The section is, however, not quite so clear in relation to cases where there never were any trustees: in cases of pure legal life estates with legal remainders over, or estates in dower, or by the curtesy, for instance. In such cases, the question may arise whether the very form of the settlement is not such evidence of an intention to have no trustees, as to render the section inapplicable. It is, however, confidently apprehended that this would not be so, unless the settlement contained an *express* declaration that notice to trustees should not be necessary. The section is specific in its terms, and so obviously desirable for the protection of the remaindermen, that the mere silence of the settlor would seem quite insufficient to negative the giving of the notices required by the section. If this be so, it will be always necessary to get two trustees appointed by the Court, in the cases where there never were any trustees, before a tenant for life can even *contract* effectually and so as to bind those in remainder to exercise the powers conferred by the Act. No doubt this necessity will be an incumbrance to the easy working of the Act, but the interests of the remaindermen seem to require it. Cases where there never were any trustees of the settlement.

It is conceived that where on the face of the title there are no trustees, it will be incumbent on a person dealing with the tenant for life, to see that trustees are appointed. Sub-sect. 3 only excuses such When incumbent on purchasers, &c. to see

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that there are trustees in existence.

person from being concerned to see to the *giving of notices* to trustees *when acting in good faith*. Where such person knows that there are *no* trustees, it is clear that he cannot be acting in good faith, inasmuch as he must know that no notices can be possibly given.

Notice must be one month before binding contract made.

It will be perceived that the notices must be given one month before even a contract is entered into under the Act. This is of course necessary, in order to give the trustees time to appeal to the Court before any contract *binding* the estate can be entered into.

Procedure on sale, lease, &c.

It is conceived that the proper course to be pursued by a tenant for life, who is desirous of executing the powers of the Act, will be to enter into a provisional and personal contract with an intending purchaser, lessee, &c., subject to the same not being successfully impeached by the trustees, and then, at the expiration of the month's notice, the tenant for life can confirm the contract *as tenant for life*.

Quære, whether trustees can abridge the notice.

Whether the trustees can abridge the month's notice by immediate acquiescence is not stated; but it is conceived that they can. The only object of the notice is to give them time for consideration and enquiry, and directly they are satisfied, it would seem reasonable that the rest of the period should be waived, in accordance with the maxim *cessante ratione cessat lex*.

XI.—Court; Land Commissioners; Procedure.

Regulations respecting payments into Court, applications, &c.

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court effectually exonerates therefrom the person making the payment.

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(3.) Every application to the Court shall be by petition, or by summons at Chambers.

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made accordingly. 39 & 40 Vict. c. 59. 44 & 45 Vict. c. 68.

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) General Rules, and Rules for the

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Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connexion with which the personal chattels to be dealt with in the Court are settled.

Sub-s. 3. Form of applications to Court.

It is conceived that for the most part, applications will be made by petition. Applications for the appointment of new trustees, for payment of money out of Court where it exceeds 300*l.*, and applications for directions as to protecting the settled land, will, by analogy to the present practice in such matters, be pretty clearly made by petition. Where, on the other hand, the application necessitates going into administrative detail, a summons would seem to be the more appropriate form.

Sub-ss. 4 and 5. Notices.

The Act does not specify what length of notice is to be given, a matter which will probably be dealt with by Rules of Court. It is probable, however, that the analogy of the practice in applications under the Settled Estates Act, 1877, will be observed, and

that the notices under these sub-sections will be in lieu of service of the petition or summons. The usual time within which petitions must be served is two clear days before the day appointed for the hearing. (Cons. Ord. XXXIV., r. 2.) Sect. 46.

This sub-section must be read in connection with sect. 47, *infra*. Sub-s. 6.

It is apprehended that the scale of fees and allowances to be taken by solicitors and officers of the Court will be based upon the analogy of the regulations contained in Ords. XX., XXII., XXIX. and XXX. of the Orders under the Settled Estates Act, 1877, which incorporate the 8th, 9th, 12th and 13th Rules of Ords. V. and VI. of the Additional Rules of August, 1875, and October, 1875, under the Supreme Court of Judicature Act, 1875. Costs.

It will be perceived that the Act makes no specific provision for the payment of trustees' costs, unless, indeed, they can be said to come under the provisions of sect. 43 (p. 107, *supra*) in relation to the receipts of trustees. It is conceived, however, that this section would not apply where the Court makes no order as to costs, because such an order implies that each party ought in justice to pay their own costs. Of course the trustees will be allowed their costs, unless they act vexatiously or otherwise with impropriety. Trustees' costs.

It is apprehended that the words of the sub-section are sufficiently wide to give the Court power to order a trustee to *pay* costs where they have been occasioned by his misconduct. In *Re Primrose* (23 Beav. 590), it was held that the Court had no jurisdiction under the Trustee Act, 1850, sect. 51, to order a trustee to pay costs. The words of that section, however, merely give the Court power to order the costs to be paid out of the estate, "or in such manner as the Court shall think proper," words which are not so strong as those used in the present sub-section. In addition to this, the authority of *Re Primrose* is not unquestioned. (See *Re Woodburn*, 1 De G. & J. 351.)

It is apprehended that where the application is for some purpose relating to the present and future Tenant for life and

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benefit of the estate (*e. g.*, a sale of the mansion-house), the costs will be ordered to be paid out of the corpus; but that where the application is *solely* for the benefit of the tenant for life (*e.g.*, a petition for payment to him of the income of money in Court), the costs will be ordered to be borne by the tenant for life (see *Wheeler* v. *Tootal*, 16 W. R. 273; *Re Marner's Trusts*, L.-R., 3 Eq. 432; *Re Parby's Trusts*, 29 L. T. 72; *Carter* v. *Sebright*, 26 Beav. 374; *Re Brackenbury's Trusts*, L. R., 10 Eq. 45); and that where it is solely for the benefit of the reversioners, they may have to bear the costs themselves. (See *Re Brackenbury's Trusts*, *supra*.)

Payment of costs out of settled property.

47. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term,

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or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

This section will be more easily understood if presented in a tabulated form. Costs may be ordered to be paid—

(1) Out of capital money arising under the Act.
(2) Out of money liable to be laid out in the purchase of land to be made subject to the settlement.
(3) By means of investments representing the last-mentioned money.
(4) Out of accumulations of income of land, money or investments.
(5) By means of a sale of part of the settled land.
(6) By means of a mortgage of the settled land to be made by such person as the Court may direct.
(7) By means of a charge on the settled land.
(8) Partly in one of the above ways, and partly in another or others.

No doubt wherever costs are ordered to be paid out of the corpus, and there happens to be any capital money available for the purpose, that will be the most obvious means of paying the costs. For forms of order for raising costs by charge or by mortgage, see *Ex parte Davies*, 16 Jur. 882; *Re Crabtree*, 14 W. R. 497.

Constitution of Land Commissioners; their powers, &c.

48.—(1.) The commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, and the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of this Act, become and shall be styled the Land Commissioners for England.

(2.) The Land Commissioners shall cause

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one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

(3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise any of those commissioners, in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders of any court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed, shall and may be carried on and completed by or under the authority of the Land Commissioners; and the Land Commissioners, for the purpose of prosecuting,

or defending, and carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or more, as the case may require, of the three several bodies of commissioners aforesaid.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the Improvement of Land Act, 1864; and the provisions of the last-mentioned Act relating to their proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed,

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by which any power or duty is conferred or imposed on them.

The object of this section is to work out the amalgamation of the three bodies named into one new corporation, called "The Land Commissioners for England."

Filing of certificates, &c. of commissioners.

49.—(1.) Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

See sect. 28, p. 90, *supra*, as to certificates of the Land Commissioners, or of a competent engineer appointed by them in relation to improvements, and the amount payable in respect of them.

XII.—Restrictions, Savings, and General Provisions.

Powers not assignable; contract not to exercise powers void.

50.—(1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exerciseable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

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(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

The object of this and the next section is to prevent a tenant for life assigning, or contracting not to exercise, his powers. If such a thing were allowed, the Act might be made inoperative: *e.g.*, by a bargain between the tenant for life and remainderman or the settlor.

Assignee of tenant for life's *estate.*

It seems, at first sight, somewhat inconsistent with the general spirit of the Act, that the assignee of the tenant for life cannot exercise the powers of the Act; but when it is remembered that the tenant for life is

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by sect. 53 made a *trustee for all parties interested* under the settlement, it will be perceived that it would have been still more inconsistent to have transferred the office of trustee along with the beneficial ownership of the life estate. It would seem that by the general law, if a tenant for life sells his life interest, any powers which he may have (*e.g.*, a power to appoint new trustees) can no longer be exercised by himself alone; but it is conceived that he may exercise them with the consent of his assignee, even where the assignment is absolute and not merely by way of mortgage (see Lewin on Trusts, c. 24.) The present section makes it clear that the tenant for life may exercise the powers of the Act so as to bind everyone claiming under the settlement, but not so as to prejudice the assignee of his own life interest.

It will be perceived that the section is retrospective, so as to give the powers of the Act to tenants for life under existing settlements, who may have assigned or mortgaged their life estates. This provision is, of course, only consistent with the general policy of the statute, which is to make it as applicable to existing as to future settlements.

It is clear that an assignee of a tenant for life cannot exercise the powers of the Act as "a person entitled for the life of another;" for, although tenants *pur autre vie* have the powers of a tenant for life, they must be tenants *pur autre vie under a settlement*. This an assignee of a tenant for life is not; for the assignment does not create estates by way of succession, and there is not even a reversion *under it*, for the assignee assigns *all his interest*, and there is nothing in him left undisposed of.

The provision allowing a tenant for life to lease without the assent of his assignee, who happens not to be in possession, seems rather harsh; but it is difficult to see how it can practically be any hardship to assignees, whose interest it is that the property should be let. Still the fact that it is left to another to fix the rent, and make the stipulations with his tenants, seems a considerable interference with the rights of assignees of tenants for life, particularly in the case of existing assignments, which have been

made without any notion of any such rights being given to the assignors. Sect. 50.

Prohibition or limitation against exercise of powers, void.

51.—(1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to deter-

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mination or cesser by or on his exercising the same.

This section is framed with a view to stopping the proverbial "coach and six" being driven through the Act, and seems to be well fitted for its purpose. When coupled with the definitions of settlement and tenant for life (as enlarged by sect. 58), it seems quite impossible to evade the Act. It will be perceived that the draftsmen have not relied wholly on the word "settlement" (which it is submitted they might safely have done), but have added the words, "will, assurance, or other instrument."

Provision against forfeiture.

52. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

This section is supplemental to the last, and is merely meant to guard against the technical distinctions between forfeitures and conditional limitations.

Tenant for life trustee for all parties interested.

53. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

Duties of tenant for life.

This section, if construed strictly (as it is submitted it ought to be), will very considerably control the large powers conferred by the Act on the tenant for life; inasmuch as it makes the proper exercise of them depend not upon mere personal and selfish considerations, but upon the question whether or not it is for the benefit of the settled estate, *and for*

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the interest of all parties entitled under the settlement, that the tenant for life should exercise them. (See *Downes* v. *Grazebrook*, 3 Mer. 208, and *Ord* v. *Noel*, 5 Mad. 440.) He must not exercise his powers from caprice, or to promote his own exclusive interests.

Must use due diligence.

It is apprehended that he will be bound to exercise all reasonable diligence in seeing that he gets the best price on a sale, and the best rent on a lease, of the settled land, and will be liable if he contracts under circumstances of haste and improvidence, or contrives to advance the interests of himself or any other particular party, at the expense of the other persons interested. (See *Pechel* v. *Fowler*, 2 Anst. 550.)

Should have property valued.

It would seem clear that the tenant for life ought to inform himself of the real value of the property, and for that purpose should employ some experienced person to give him an estimate. (*Oliver* v. *Court*, 8 Price 165; Sug. V. & P. 55, 11th ed.)

Should convert leaseholds before they become deteriorated.

Again, as has been pointed out (p. 79, *infra*), it would (it is confidently submitted) be the duty of the tenant for life to sell leasehold lands upon which he had invested capital money, within such a period as would prevent any loss to the settled estate. No doubt he is *empowered* to invest the capital money in purchase of long leaseholds, but that power must, under this section, be exercised for the benefit of all parties claiming under the settlement, and therefore it would be a plain breach of duty for the tenant for life to permit the interest of the remainderman to be deteriorated, in order that his own income might be sustained or enlarged.

Cannot sell to himself.

Another important consequence of the section is, that the tenant for life will not be able to sell to himself. This has been made the subject of some criticism in the press, but it is difficult to appreciate the argument that a tenant for life should be allowed to be both vendor and purchaser without control. It is, however, apprehended that by leave of the Court a tenant for life might buy the settled estate. Such leave, no doubt, would not very readily be granted; but, if evidence were produced that it was *clearly* desirable in the interest of all parties, the Court

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would scarcely refuse its sanction. (See *Farmer* v. *Dean*, 32 Beav. 327.)

In fact, the section makes it obligatory on the tenant for life not to take advantage of his situation. The Act gives him the most ample powers of dealing with the property by sale, lease, exchange, partition or enfranchisement, *not for his own sake, but for the sake of the property*. The Act is not an Act for the relief of tenants for life, but for the better management and development of settled estates; and therefore the tenant for life, although armed with ample powers of doing the best he can for the settled land, must exercise those powers *for that purpose*, and not for advancing his own interests at the expense of the remaindermen.

Quære, whether tenant for life an express trustee.

Sooner or later the question will arise whether this section makes a tenant for life an express trustee, so as to oust the operation of the Statute of Limitations, or whether it makes him merely a constructive one. It is submitted that it clearly makes him an express trustee. The doctrine of equity, that, as between *cestui que trust* and trustee, in the case of an express or direct trust, no length of time is a bar, turns entirely upon the privity of estate existing between them. The possession of one is the possession of the other, and there can be no adverse title. (Lewin, 704, and cases there cited.) As Lord Redesdale said, in *Hovenden* v. *Lord Annesley* (2 Sch. & Lef. 633), "If a trustee is in possession, and does not execute his trust, the possession of the trustee is the possession of the *cestui que trust;* and if the only circumstance is that he does not perform his trust, his possession operates nothing as a bar, *because his possession is according to his title*," which would clearly be the case in the instance under consideration.

Injunction.

Another consequence of this section would seem to be, that in case of a tenant for life intending to use the powers of the Act for his own purposes, an injunction might be obtained. On the other hand, it seems clear, that the trust created by the statute differs from ordinary trusts in one very important matter, viz., that the Court will not be able to administer the trust so as to suspend generally the

Action to administer trust not permissible.

exercise of the powers conferred on the tenant for life by the Act. If it were permissible for a remainderman to ask that the trust should be administered by the Court, the Act would be entirely evaded, inasmuch as an administration action suspends the powers of the trustee and makes them exerciseable only by leave of the Court. (Lewin on Trusts, 391.)

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General protection of purchasers, &c.

54. On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

It will be observed that the protection afforded by this section is conditional on the purchaser, lessee, mortgagee, or other person dealing *in good faith*. A collusive arrangement with the tenant for life will receive no protection.

The last line of the section is rather obscure. It is conceived that it cannot be construed to extend to a case where the directions of the Act are disobeyed, as, for instance, where a lease is made not under seal, or the like.

Exercise of powers; limitation of provisions, &c.

55.—(1.) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court or the Land Commissioners are exerciseable from time to time.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is

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exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

Sub-s. 1. Powers exercise-able from time to time.

This sub-section is, it is conceived, inserted merely out of abundance of caution; for a power is not necessarily extinguished by having been once exercised. Thus, a power to lend a specified sum to the tenant for life is not extinguished by *one* loan, but, after repayment, the money may be again advanced. (*Versturme* v. *Gardiner*, 17 Beav. 338; *Omerod* v. *Hardman*, 5 Ves. 732; *Hervey* v. *Hervey*, 1 Atk. 560; and see Farwell on Powers, 26.)

Sub-s. 2. Power to execute all necessary deeds, &c.

Sub-sect. 2 is apparently intended to cover all cases (if any) left unprovided for by sect. 20. The power of sale, enfranchisement, exchange, partition, leasing, mortgaging, or other power referred to, must be limited to the powers conferred by this Act (see sub-sect. 3).

Saving for other powers.

56.—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise,

exerciseable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exerciseable for any purpose provided for in this Act.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

The object of this section is to guard against the possibility of the same powers in respect of the same property being vested in two persons at the same time. Thus, but for this section, trustees with power of sale might have sold to one person, and the tenant for life might under the Act have sold to another. Hence, in order to prevent such a conflict of powers, it was necessary to give the tenant for life the right of vetoing the powers of the trustees when such powers are co-extensive with, or in any way entrench upon, those given to the tenant for life by the Act. Where, however, the powers of the trustees are not

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co-extensive with, and do not entrench upon, those of the tenant for life, the section does not apply. For instance, it is apprehended that a power to trustees to raise portions by *mortgage* would be outside the section; for a tenant for life has no power to mortgage for such a purpose. On the other hand, a power to trustees to raise portions by *sale* would seem henceforth to be dependent on the consent of the tenant for life; for a power of sale exerciseable for any purpose whatever (and therefore including the raising of portions) is conferred on the tenant for life by the Act. If this construction be correct, it would seem that the tenant for life will be able to prevent trustees selling the settled land for the purpose of raising portions, a result which could scarcely have been foreseen by the legislature. The Court would, however, on the application of the trustees, order a sale, it is apprehended.

Additional or larger powers by settlement.

57.—(1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exerciseable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

This section must, of course, be read along with sect. 56, sub-sect. 2, which makes the consent of the tenant for life necessary to the exercise by the trustees of the settlement (or other person) of any power conferred by the settlement, exerciseable for any purpose provided by this Act.

To give an example of the effect of sub-sect. 2; suppose that the settlor gave the tenant for life

power to sell the mansion house without the leave of the trustees or the Court; then, under this section, the sale might be carried out in all respects under, and with the ancillary powers conferred by, this Act, in relation to settled land generally.

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XIII.—Limited Owners generally.

Enumeration of other limited owners, to have powers of tenant for life.

58.—(1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

(i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services:

(ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event:

(iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:

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(iv.) A tenant for years determinable on life, not holding merely under a lease at a rent:

(v.) A tenant for the life of another, not holding merely under a lease at a rent:

(vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose:

(vii.) A tenant in tail after possibility of issue extinct:

(viii.) A tenant by the curtesy:

(ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under

which his estate or interest arises, and to the land therein comprised. Sect. 58.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

Possession essential.

It will be observed that the persons mentioned can only exercise the powers conferred by the Act on tenants for life, if their estate in the settled land is in *possession*. It is, however, confidently apprehended that this word is only used as opposed to *reversion*, and that where such persons have assigned their interests, their *estates* are still in possession, and their powers still exerciseable under sect. 50. The mere leasing of settled land to tenants does not exclude the clause, for the possession of the lessee is the possession of his lessor.

(i.) Tenant in tail.

It would seem that the effect of this paragraph is to give a tenant in tail in possession power to exercise the powers conferred by the Act on a tenant for life; but seeing that by the simple process of enrolling a deed, and of procuring the consent of that unusual personage, "the protector," he can pocket the capital money, instead of paying it to the trustees or into Court, it is not considered likely that this clause will be very freely acted on, except in relation to statutory entails. Even without the protector's consent, a tenant in tail can create a base fee (*i.e.* can bind his own issue, but not other remaindermen).

(ii.) Executory limitations.

It will be borne in mind that, by the 10th section of the Conveyancing Act, 1882, it is enacted, that where there is a person entitled, under an instrument coming into operation after the 31st December, 1882, to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limita-

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tion is to be or become void and incapable of taking effect if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect. It follows, therefore, that the provisions of the clause now under consideration will not apply to cases where the event in which the estate is to go over is the default or failure of issue, and there are issue who have attained twenty-one: for in that event the estate (whether in fee for life or years) becomes indefeasible. If a person entitled in fee, subject to such an executory limitation over, should exercise the powers of a tenant for life under this section, he will, upon any of his issue attaining twenty-one, be absolutely entitled to all capital money in Court or in the hands of the trustees of the settlement.

(iii.) Base fees.

A base fee is a very rare estate. It is defined by Blackstone as "such a fee as hath a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end, as in the case of a grant to A. and his heirs *tenants of the manor of Dale;* in this instance, whenever the heirs of A. cease to be tenants of that manor, the grant is entirely defeated." (Steph. Comm. bk. ii. pt. i. c. 3; and see *Lord Cardigan* v. *Armitage*, 2 Barn. & Cress. 202.) The term "base fee" is, however, more usually restricted to that species of qualified fee which is created where a tenant in tail conveys his estate so as to bar his own issue, but not subsequent remaindermen or reversioners. (Steph. Comm. bk. ii. pt. i. c. 3.) In the Fines and Recoveries Act, its meaning is, by express provision, confined (so far as that Act is concerned) to this last-mentioned species of estate. It would seem proper, however, that in the present Act its meaning should not be restricted, but should be held to embrace all estates heretofore known as base fees.

(iv. & v.) Tenants for life in leaseholds.

These two clauses are intended to prevent the Act being evaded by lands being settled for terms of years determinable on life or lives. The saving words, "not merely holding under a lease at a rent," are no doubt intended to stop a *bonâ fide* lessee from selling the fee simple. It is not considered probable

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that the Court would uphold any evasion of the Act attempted to be carried out by making the life estates in form estates for years determinable on life, and by making the life tenants pay to the trustees a yearly nominal rent. Such an arrangement would (it is conceived) not be a lease at all—certainly not a *bonâ fide* one. A "lease" is a simple letting for a specified time, whereas such a document as that just indicated would be a complicated settlement, and a tenant for life thereunder could no more be said to be *merely holding under a lease*, than a mortgagee could be said to be merely holding under a conveyance.

(vi.) Conditional life estates and life estates subject to trusts for accumulation.

This section is very wide, but *quære* whether it ought not to have been limited by the addition of the words, "not holding merely under a lease at a rent."

A doweress seems to have been purposely omitted from the list of persons entitled to exercise the powers of a tenant for life.

(ix.) Tenant for life of net proceeds.

This clause is intended to guard against the decision of Sir G. Jessel, M. R., in *Taylor* v. *Taylor* (L. R., 20 Eq. 297), viz. that where land is vested in trustees upon trust to collect the rents, and after payment of all rates, insurance, repairs, and other outgoings, to pay the net residue to A. for life, such a limitation does not render A. a life tenant under the Settled Estates Act.

XIV.—Infants; Married Women; Lunatics.

Infant absolutely entitled to be as tenant for life.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

This section must be read in conjunction with the next one. The effect of the two taken together is, that where an infant is *absolutely* entitled to property, the trustees of the settlement (if any) may sell, lease, partition, exchange, or enfranchise, on such infant's behalf; and if there be no trustees, the infant's guardian or next friend may apply to the Court to appoint a person to do so. It would seem, however,

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that in that case the Court need not appoint trustees (see note to sect. 45, p. 109, *supra*), inasmuch as by sect. 60 the powers of the Act may, where there are no trustees, be exercised by such person *and in such manner as the Court orders.*

Powers of guardians under Settled Estates Act, 1877.

It should be borne in mind that, apart from the powers conferred by this section, under sect. 49 of the Settled Estates Act, 1877, it is enacted that *all powers* given by that Act may be executed by guardians on behalf of infants, including (under sect. 46) a power to lease for twenty-one years. It would seem, however, that the guardian under that enactment must be a guardian appointed by the Court, and not a natural or testamentary guardian (*Re Caddick's Estate*, 7 W. R. 334; *Re James*, L. R., 5 Eq. 334); but as to this, consider judgments in *Re Marquis of Salisbury*, L. R., 2 Ch. Div. 39.

Tenant for life, infant.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

See note to sect. 59, *supra*.

Married woman, how to be affected.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman who, if she had not been a married woman, would have

been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

The effect of this section is to put a married woman entitled for her separate use (whether she be restrained from anticipation or not) in exactly the same position as if she were unmarried, and to give a married woman, who is *not* entitled for her separate use, all the powers of the Act, subject to the concurrence of her husband.

Separate estate may be created either by express

Sub-s. 2. Separate use.

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words contained in an agreement, gift, devise or bequest, or by statute.

Separate use created by agreement, gift, or devise, &c.

No particular words are required to create a separate estate by agreement, gift, or will; but the words to exclude the operation of the common law rules, which transfer the wife's estate to the husband, must, as was said by Lord Brougham in *Tyler* v. *Lake* (2 Russ. & M. 183), in a passage quoted with approval by Lord Westbury in *Gilbert* v. *Lewis* (1 De G., J. & S. 38), be clear, and afford no room for doubt as to the intention of the party or parties creating the estate. The words "separate use" have, no doubt, acquired a technical meaning, and one therefore of special virtue, but they are not indispensable. For instance, it was held in *Wagstaffe* v. *Smith* (9 Ves., 520), that the expression "for her own use independently of her husband," was sufficient; and in *Glover* v. *Hall* (16 Sim. 568), the words "for her own use and benefit independently of any other person," received the same construction. So, in *Edwards* v. *Jones* (14 W. R. 815), a gift to the wife, with direction that her husband should have no control, was deemed sufficient. And so where the gift is couched in such language as to confer the *incidents* of separate estate, the Court will imply that a separate estate is intended, and will construe the gift accordingly. For instance, where it is directed that a wife's receipt shall alone be a sufficient discharge to the trustee, then, since a married woman's receipt, except for her separate property, is invalid, it will be presumed that the gift was intended for her separate use. (*Lee* v. *Prideaux*, 3 B. C. C. 381.) So where the property is directed to be held for her sole disposition, a similar intention is necessarily implied; for unless it were her separate property, she could not alone dispose of it. (*Ex parte Ray*, 1 Madd. 199; *Lindrell* v. *Thacker*, 12 Sim. 178.)

Statutory separate use.

The Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), entirely reverses the old common law doctrine, so that, in course of time, the property of every married woman will be held by her as separate estate. By the second section, all real and personal property of a woman married after the Act is to be

held by her as a *feme sole;* and by section five, it is enacted that every woman married *before the commencement of the Act* is to be entitled to hold and dispose of all real and personal property as her separate estate, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall *accrue* after the commencement of that Act. Sect. 61.

Where a married woman is entitled to property for her separate use, she may freely convey her equitable interest in it, as if she were a *feme sole*, without the joinder of her husband, and without acknowledging the deed under the Fines and Recoveries Act. (*Taylor* v. *Meads*, 34 L. J., Ch. 203.) Acknowledgments of deeds by married women.

Where, however, a woman is entitled to real estate, and it is *not* limited to her separate use, she can only convey *her estate* in it by an acknowledged deed, in which her husband joins, under the provisions of the Fines and Recoveries Act. Where, however, a married woman has *a power of appointment* over land, she can execute it without the concurrence or joinder of her husband (*Lady Travel's case*, 3 Atk. 711; *Peacock* v. *Monk*, 2 Ves. sen. 191; *Doe* d. *Blomfield* v. *Eyre*, 5 C. B. 713); and without the necessity of acknowledging the deed. (See 3 & 4 Will. 4, c. 74, s. 78.) It is conceived that, apart from the words of the section to which this note is appended, (which give a married woman and her husband authority to execute the powers of the Act, and make no mention of acknowledgment,) the principle in reference to the exercise of powers of appointment would be applicable to the powers conferred by the Act, and that consequently no acknowledgment will be needed.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Tenant for life, lunatic.

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Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

It is apprehended that a committee can only exercise the powers of the Act with the safeguards provided in the case of ordinary tenants for life, and that consequently he must give notice to the trustees, under sect. 45 (p. 108, *supra*), and must either pay capital money to them, or into Court. It will be perceived that the order authorizing the committee to exercise the powers of a tenant for life, must be made on petition in lunacy. Such a petition would be intituled in the matter of the particular lunatic, and in the matter of the estate, and of this Act.

XV.—Settlement by way of Trusts for Sale.

Provision for case of trust to sell and re-invest in land.

63.—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or

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any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid,

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and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).

(ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorized by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold,

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or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

The object of this section is to prevent the Act being evaded by settlements of land in trust for sale. If such were permitted, the trustees might (if discretion were given them by the settlement) indefinitely postpone the sale, and thus keep the land settled against the wishes of the tenant for life, and the general interests of all parties beneficially interested.

The main difficulty about this section is, that in effect it allows of concurrent powers of sale in two different people: for the trustees can sell under their trust, and on the other hand the tenant for life can sell under his statutory power! However, this was unavoidable, for to have applied sect. 56 to *trusts* for sale, would have been to render the trust nugatory. The defect is not likely to cause more inconvenience in practice than the common case of a mortgagor and a mortgagee, the latter having a power of sale. The tenant for life cannot enter into binding contracts without giving the trustees a month's notice, under sect. 45 (p. 108, *supra*), and, if they have already sold under their trust, that fact would at once put a stop on the powers of the tenant for life.

The same remarks apply to the powers of leasing, and other powers; the necessity of giving notice to the trustees preventing the possibility of contemporaneous *binding* and conflicting contracts being entered into by the trustees and the tenant for life.

XVI.—Repeals.

Repeal of enactments in schedule.

64.—(1.) The enactments described in the schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect any right accrued or

obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act. Sect. 64.

Lord Cranworth's Act.

The Act repeals so much of Lord Cranworth's (or the Trustees and Mortgagees) Act, 1860, as was not repealed by the Conveyancing and Law of Property Act, 1881. The repealing clause of the last-mentioned Act did not contain the words "any right accrued or obligation incurred thereunder before the commencement of this Act," and some critics have expressed an opinion that the saving clause did not continue, in favour of instruments executed before the date of the repeal, the operation of the statute beyond the date of the repeal. This criticism is, it is conceived, of too subtle a nature to be practically adopted by the Court; but the words of the present section are amplified, so as to put an end to any doubt upon the question, and it seems quite clear that powers conferred by the repealed Act will still be applicable to instruments executed before the repeal.

Improvement of Land Act, 1864.

The repeal of sects. 17 and 18 of the Improvement of Land Act, 1864, greatly enlarges the powers of the Land Commissioners. By the sections in question, it was imperative, that before the commissioners could sanction any improvements, notice had to be given of the application, both by advertisement, and by a notice in writing given to every person entitled to any estate in the land or any part thereof in rever-

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sion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance therein, and to every person entitled to any mortgage upon such land or any part thereof, who, by reasonable inquiry should be known to be so interested; and such advertisements and notices had to specify the details of the proposed improvements. In case any such person dissented in writing from the application, within a month from the notice, the commissioners were disabled from making any order under the Act until the dissent was withdrawn, or until an order was made by the Court of Chancery, authorizing the commissioners to make an order; and where the persons entitled in remainder were infant children of the tenant for life, the commissioners could not under any circumstances make an order without leave of the Court.

These restrictive provisions will no longer be in force, and it will therefore be henceforth far cheaper and easier to *borrow* money for improvements under the Improvement of Land Act, 1864, than it has been hitherto.

Settled Estates Act, 1878.

Only one section of the Settled Estates Act (that relating to the protection of settled estates) is repealed; but the powers conferred by the present Act would seem to make the powers conferred by the Settled Estates Act almost obsolete, except perhaps the powers conferred on guardians, committees, &c., by the combined operation of sects. 46 and 49.

XVII.—Ireland.

Modifications respecting Ireland.

65.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but

General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that Division. Sect. 65.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that Division.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act. 40 & 41 Vict. c. 57.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exerciseable by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

(7.) The provisions of Part II. of the County Officers and Courts (Ireland) Act, 1877, relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exerciseable by those Courts under this Act. 40 & 41 Vict. c. 56.

(8.) Rules and Orders for purposes of this Act, as far as it relates to the Civil Bill Courts, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act, in manner

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prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877.

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years.

THE SCHEDULE.

REPEALS.

23 & 24 Vict. c. 145. in part.	An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages, and wills .... Parts I. and IV. (being so much of the Act as is not repealed by the Conveyancing and Law of Property Act, 1881).	in part; namely—
27 & 28 Vict. c. 114. in part.	The Improvement of Land Act, 1864..... Sections seventeen and eighteen: Section twenty-one, from "either by a party" to "benefice) or" (inclusive); and from "or if the land owner" to "minor or minors" (inclusive); and "or circumstance" (twice): Except as regards Scotland.	in part; namely—
40 & 41 Vict. c. 18. in part.	The Settled Estates Act, 1877 ..... Section seventeen.	in part; namely—

PRECEDENTS.

PRECEDENTS.

I. Conveyancing.

I.

Agreement for Sale of Settled Land by a Tenant for Life.

THIS AGREEMENT made the day of , 1883, Between A. B., of &c. (hereinafter called "the vendor"), of the one part, and C. D., of &c. (hereinafter called "the purchaser"), of the other part, Witnesseth, that it is hereby mutually agreed by and between the vendor and the purchaser as follows, that is to say:—

1. The vendor shall sell and the purchaser shall purchase for an estate of inheritance in fee simple in possession, free from incumbrances, all those several messuages, pieces of land, and hereditaments, situate in the parish of , in the county of , containing together acres, or thereabouts, which are hereinafter called "the said premises," and are more particularly specified in the schedule hereunder written, and coloured red on the plan hereto annexed, at the price of £ .

2. Within fourteen days from the date hereof, the vendor will, at his own expense, deliver to the

purchaser an abstract of title to the said premises, commencing with the will dated the day of , 184 , of X. Y., Esquire, late of in the county of , deceased.

3. Within days after the delivery of the abstract, the purchaser shall communicate to Mr. , the vendor's solicitor, all his objections and requisitions (if any) in respect of the title, and of all matters arising upon this agreement.

4. In making any requisitions or objections in respect of the title, the purchaser shall observe the following conditions, that is to say:—

(a) The purchaser shall assume that the said X. Y. was at the date of his decease seised of the said premises for an estate in fee simple, free from incumbrances.

(b) The purchaser shall admit the identity of the said premises with those comprised in the documents of title which the purchaser shall under this agreement be entitled to peruse, upon the evidence afforded by a comparison of the descriptions in such documents, and of a statutory declaration to be made, if required, at the purchaser's expense, that the said premises have been enjoyed according to the title for years.

(c) If any document of title is insufficiently stamped, or is not stamped at all, the purchaser shall make no objection or requisition in respect thereof.

(d) One of the documents of title (being an appointment of new trustees under the

said will) has been lost. No objection or requisition shall be made by the purchaser in respect of such loss, but he shall be satisfied with the production of the draft of the said document, on which is endorsed a memorandum of its having been engrossed.

(*Here insert any other conditions guarding against objection being taken to flaws in the title.*)

5. Any further requisitions arising out of the answers to the original requisitions shall be communicated to the said Mr. , within seven days after the purchaser or his solicitor shall have received such answers.

6. Subject only to such objections and requisitions as shall be communicated within the time aforesaid, the title shall be conclusively deemed to have been accepted, and for this purpose time shall be deemed to be of the essence of the contract.

7. If the purchaser shall make and press any objection to, or requisition upon, the title or otherwise, not provided for by this agreement, which the vendor shall be unable, or unwilling to remove or satisfy, the vendor shall have the option at any time (whether he shall or shall not have made any attempt to remove or satisfy such objection or requisition) of rescinding the contract on giving a notice in that behalf, and delivering to the purchaser or his solicitor an authority to the vendor's solicitor for the return of the deposit, and the purchaser shall thereupon on request return the abstract to the vendor, but shall not be entitled

to any interest, costs, expenses, damages, or compensation, on any account whatever.

8. The said premises are believed and shall be admitted to be correctly described in the said schedule and on the said plan, and are sold subject to existing tenancies (the terms of which can be ascertained from the said Mr. [*vendor's solicitor*] at any time before the completion of the sale), and to all rights and easements whatsoever subsisting thereon. If, however, any error, misstatement, or mis-description, shall be discovered, the same shall not vitiate this agreement; but if discovered prior to the completion of the purchase (and not otherwise) shall form the subject of compensation to be allowed by the vendor or purchaser, as the case may be.

9. Immediately after the execution of this agreement, the purchaser shall pay into the hands of the said Mr. [*the vendor's solicitor* (*a*)] £ as deposit and in part payment of the purchase-money, and shall pay the balance of such purchase-money, as mentioned in Article 11, on the day of next, at the office of Mr. aforesaid, at which time and place the purchase shall be completed, and up to which time the rents and profits [*or* "possession"] will be received [*or* "retained"], and all outgoings cleared by the vendor. But if from any cause whatsoever (even

(*a*) This deposit must, of course, be paid eventually to the trustees or into Court before completion. It may be said that the purchaser runs great risk in paying it to the tenant for life, but a purchaser always runs this risk in paying a deposit, inasmuch as he never knows what the vendor's title is, or even whether he has any title at all.

the vendor's default) the purchase shall not be completed on that day, the purchaser shall pay interest on the amount of his purchase-money remaining unpaid after the rate of 5*l.* per cent. per annum, until the purchase shall be completed.

10. Upon payment of the balance of the purchase-money the vendor shall execute a proper assurance of the said premises to the purchaser, or as he shall direct, such assurance and every other (if any) assurance and act required, to be prepared and done by and at the expense of the purchaser. And the draft of such assurance shall be submitted for approval to Mr. aforesaid [*the vendor's solicitor*] ten days, and the engrossment thereof sent to him two days, before the day of completion.

11. The vendor is a tenant for life selling and agreeing to sell under the powers of the Settled Land Act, 1882, and the concurrence of any parties interested in succession or remainder to him shall not be required; but the trustees of the settlement, to whom the said deposit will be forthwith paid by the vendor, and to whom the balance of the said purchase-money shall be paid by the purchaser on completion of the purchase, shall join in the conveyance for the purpose only of giving a discharge for the purchase-money.

12. The vendor shall not be required to enter into any covenants other than the implied statutory covenants for title limited as respects the reversion or remainder expectant on his life estate, and the title to and further assurance of the said

premises after his decease, to the acts, deeds, and defaults of himself and his own heirs and persons claiming or to claim under or in trust for him, them or any of them.

13. The vendor will retain all documents of title which do not relate exclusively to the said premises, and will give to the purchaser an acknowledgment of his right to production and to delivery of copies of such documents, and an undertaking for safe custody thereof.

14. If the purchaser shall fail to comply with the conditions herein expressed his deposit shall be wholly forfeited and shall be retained as liquidated damages by the vendor, who shall be at liberty, on giving one week's notice of his intention in that behalf, to re-sell the property, and the deficiency (if any) occasioned by such subsequent sale or default shall be made good by the said C. D.; and it shall not be necessary for the vendor previously to tender any assignment or other document to the said C. D., who shall also not be entitled to any excess that may arise on any such re-sale.

As WITNESS, &c.

The Schedule above referred to.

[*Here describe the property sold.*]

II.

Agreement for an Agricultural Lease by a Tenant for Life.

THIS AGREEMENT, made the day of , 1883, Between A. B., of &c. (hereinafter called "the lessor"), of the one part, and C. D., of &c. (hereinafter called "the lessee"), of the other part, Witnesseth that it is hereby mutually agreed by and between the lessor and the lessee as follows, (that is to say)—

1. The lessor shall demise and let, and the lessee shall take, all that farm and lands in the parish of , in the county of , containing acres or thereabouts, and known as farm, with the homestead and other buildings now standing and being thereon, and all fixtures belonging thereto, for the term of fourteen years from the day of next, at the yearly rent of £ , payable quarterly on the usual quarter days, the first of such quarterly payments to be made on the day of next.

2. The lessee shall not require or be entitled to an abstract or statement of the title of the lessor to the said premises, save and except an abstract of the settlement under which the lessor now holds the said premises as tenant for life, and the lessee shall admit that the said premises are comprised in such settlement without any evidence of that fact.

3. The lessor (as tenant for life under the powers conferred on him as such by the Settled

Land Act, 1882,) or his successors in title, will, on the request of the lessee, his executors, administrators or assigns, execute a proper lease of the said premises to the lessee, his executors, administrators or assigns, for the term and at the rent aforesaid, and upon and subject to the conditions and stipulations in this agreement specified. Such lease shall be by deed, and a counterpart thereof shall be executed by the lessee, his executors, administrators or assigns, and delivered to the lessor or his successor in title.

4. The said lease shall contain covenants by the lessee to do, perform, and observe the following things and matters, viz. :—

(a) To pay the said rent quarterly on the said quarterly days without any deduction.

(b) To pay all existing and future taxes, rates, and outgoings.

(c) To keep such portions of the said premises as are of an insurable nature insured in a sum not less than £ , and to produce the policy or policies for such insurance, and the receipts for all premiums, to the lessor or his successors in title whenever required.

(d) Not to assign, underlet, or part with the possession of the said premises without the written consent of the lessor or his successors in title.

(e) To keep the said premises and all buildings, fixtures, gates, hedges, ditches, drains, and other things in or about the same, in good repair.

(f) To cultivate, manure, and carry on the said farm in a husbandlike manner, and according to the most approved method of agriculture.

(g) Not to convert any arable land, forming part of the said premises, into pasture without the licence of the lessor or his successors in title.

(h) To yield up the said premises at the expiration or sooner determination of the said term in good repair and condition.

5. The said lease shall contain a condition for re-entry by the lessor or his successors in title on the rent not being paid within twenty-eight days after the same shall be due from time to time and on breach of any of the lessee's said covenants (*a*).

6. In case any disputes shall arise between the lessor or his successors in title and the lessee, his executors, administrators or assigns, touching the construction of this agreement, or touching the preparation of the said lease, or as to the extent and form of the lessee's covenants therein, the same shall be settled by the lessor's conveyancing counsel, T. M., Esq., of Lincoln's Inn, whose decision shall be conclusive on both parties. As WITNESS, &c.

(*a*) See Conveyancing and Law of Property Act, 1881, sect. 14.

III.

Conveyance by Tenant for Life of Settled Freeholds, Purchase Money being paid to Trustees.

THIS INDENTURE is (*a*) made the day of , 1883, Between A. B., of &c. [*tenant for life*], of the first part, C. D. and E. D., of &c. [*trustees*], of the second part, and G. F., of &c. [*purchaser*], of the third part: Whereas W. Y., late of , in the county of , esquire, duly made and executed his last will, dated the day of , 187 , and thereby devised all the real estate of which he should die possessed unto the said C. D. and E. D., their heirs and assigns, to the use of the said C. D. and E. D., their executors, administrators, and assigns, for the term of ninety-nine years, without impeachment of waste, upon the trusts thereinafter declared of and concerning the same term (being trusts for securing the due payment of an annuity to the widow of the said testator), and subject thereto to the use of the said A. B. and his assigns for and during the term of his natural life without impeachment of waste, with divers remainders over; but the said will did not confer any power to sell the said testator's real estate either upon the said C. D. and E. D., or upon any other persons or person whomsoever: And whereas the said testator died on the day of , 187 , without having revoked or altered his said

(*a*) The insertion of this word is made as a concession to common sense. But for its antiquity no one would tolerate the usual ungrammatical opening phrase, for sentence it is not, but merely the dependent member of an unfinished one.

will, which was duly proved by the executors therein nominated in the Principal Registry of the Probate Division of the High Court of Justice on the day of following: AND WHEREAS the said testator was, at the date of his decease seised of the hereditaments described in the first schedule hereunder written and intended to be hereby conveyed (and which are hereinafter called "the said hereditaments") for an estate of inheritance in fee simple free from incumbrances: AND WHEREAS by an order of the High Court of Justice, Chancery Division, made "In the matter of estates settled by W. Y. by will dated the day of , 187 , consisting of certain lands in the parish of , in the county of , and In the matter of the Settled Land Act, 1882," the said C. D. and E. D. were appointed trustees of the hereinbefore recited will for the purposes of the said Settled Land Act, 1882: AND WHEREAS the said A. B., in exercise of the powers conferred on him as tenant for life by the said Settled Land Act, 1882, has agreed with the said G. F. to sell to him the said hereditaments in fee simple in possession, free from incumbrances, at the price of £ ; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of £ to the said C. D. and E. D. paid by the said G. F. by the direction of the said A. B. before the execution of these presents (the receipt whereof they the said C. D. and E. D. do hereby acknowledge, and from the same, by virtue of the powers conferred on trustees by the said Settled Land Act, 1882, do hereby discharge the said G. F., his

heirs, executors, administrators and assigns), he, the said A. B, AS BENEFICIAL OWNER, in exercise of the power subsisting in him as tenant for life of the said hereditaments by virtue of the said Settled Land Act, 1882, and of every and any other power (if any) in this behalf enabling him, doth hereby convey unto the said G. F., his heirs and assigns, ALL the said hereditaments described in the said first schedule hereunder written [and delineated in the plan drawn on the margin of these presents, and therein coloured red], with their and every of their appurtenances, TO HOLD the said hereditaments and all and singular other (if any) the premises hereinbefore expressed to be hereby conveyed unto and TO THE USE of the said G. F., his heirs and assigns, in fee simple, discharged from all the limitations, powers and provisions of the hereinbefore recited will of the said W. Y. deceased, and from all estates, interests and charges subsisting or to arise thereunder; PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED (*a*), that as respects the reversion or remainder expectant on the life estate of the said A. B. of and in the said hereditaments hereinbefore expressed to be hereby assured, and the title to and further assurance of the said hereditaments after his decease, the covenants for title implied by the said A. B. having conveyed the said hereditaments as beneficial owner shall not extend to the acts, deeds or defaults of any person or persons other than himself and his own heirs, and persons claiming or to claim under or in trust for him,

(*a*) As to this proviso, see Dart's V. & P. 5th ed. 548.

them or any of them. AND LASTLY, the said A. B. hereby ACKNOWLEDGES the right of the said G. F. to the production of the documents of title specified in the second schedule hereunder written, and to take copies thereof and extracts therefrom, AND UNDERTAKES for safe custody thereof. IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.

ALL that field containing ten acres, be the same more or less, situate at in the county of bounded on the N. side thereof by the highway leading from to ; on the W. side thereof by a lane leading out of the said highway to the village of ; and on the E. and S. sides thereof by other hereditaments of which the said A. B. is tenant for life under the limitations of the hereinbefore-recited will, and which said field, expressed to be conveyed by these presents, is and has for some years past been in the occupation of the said G. F. as yearly tenant.

THE SECOND SCHEDULE above referred to.

[*Here insert list of documents of title retained by the vendor.*]

IV.

Conveyance by Tenant for Life of Settled Freeholds, the Purchase-money being paid into Court.

THIS INDENTURE is made the day of , 1884, Between A. B., of &c. [*tenant for life*], of the one part, and P. R., of &c. [*purchaser*], of the other part: Whereas by an indenture dated the 2nd day of January, 1883, and made between L. M., of the first part, the said A. B. (party hereto), of the second part, and C. D. and E. D. of the third part, the hereditaments hereinafter described, and intended to be hereby conveyed, and which are hereinafter called "the said hereditaments," were granted and assured unto the said C. D. and E. D. and their heirs, To the use of the said L. M. during his life, without impeachment of waste, and from and after his decease, To the use of the said A. B. (party hereto) during his life, without impeachment of waste, with divers remainders over. And it was by the indenture now in recital declared that the said C. D. and E. D. should be trustees of the indenture now in recital for all the purposes of the Settled Land Act, 1882: And whereas the said L. M. died on the day of 1884, whereupon the said A. B. became and now is tenant for life in possession of the said hereditaments: And whereas the said A. B. as such tenant for life, and in exercise of the powers conferred on him in that behalf by the Settled Land Act, 1882, has agreed with the said P. R. to sell

to him the said hereditaments in fee simple in possession, free from incumbrances, at the price of £ , which said sum the said A. B. has elected to have paid into Court by the said P. R. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £ paid by the said P. R. into the Bank of England, to the account and with the privity of her Majesty's Paymaster General for the time being, on behalf of the Chancery Division of the High Court of Justice, to the credit of "*Ex parte* A. B. In the matter of the Settled Land Act, 1882," HE the said A. B. AS BENEFICIAL OWNER, in exercise of the power, &c. [*operative part, parcels, habendum, proviso limiting implied covenants, and acknowledgment, and undertaking as in Precedent III., sup.* p. 158]. IN WITNESS, &c.

[*Schedules as in Precedent III., sup. p.* 158.]

V.

CONVEYANCE BY TENANT FOR LIFE OF SETTLED COPYHOLDS.

THIS INDENTURE is made the day of , 1884, BETWEEN A. B., of &c. [*tenant for life*], of the first part, C. D., of &c., and E. D., of &c. [*trustees*], of the second part, and P. R., of &c. [*purchaser*], of the third part: WHEREAS by an indenture dated the day of , 1883, and made between L. M. of the first part, the said A. B. (party hereto) of the second part, and the said C. D. and E. D. (parties thereto) of the

third part, certain freehold hereditaments in the indenture now in recital described were granted and assured unto the said C. D. and E. D., and their heirs, To the use of the said L. M. during his life, without impeachment of waste, and from and after his decease, To the use of the said A. B. during his life, without impeachment of waste, with divers remainders over: And by the indenture now in recital the said L. M. covenanted with the said C. D. and E. D. that he, the said L. M., or his heirs, would forthwith, at his or their own cost, effectually surrender into the hands of the lord of the manor of , in the county of , according to the custom thereof, the copyhold hereditaments described in the first schedule hereunder written and intended to be hereby conveyed (and which are hereinafter called "the said copyhold hereditaments"), To the use of the said C. D. and E. D., their heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, suits, and services, and upon such trusts and subject to such powers as should as nearly correspond with the uses, trusts, and powers in the indenture now in recital contained of the said freehold hereditaments as the different qualities of the estates and the rules of law and equity would permit: And it was by the indenture now in recital declared that the said C. D. and E. D. should be trustees of the indenture now in recital for all the purposes of the Settled Land Act, 1882: And whereas at a Court Baron held in and for the said manor on the day of , 188 , the said L. M.,

in pursuance of the said covenant in that behalf contained in the hereinbefore-recited indenture, duly surrendered the said copyhold hereditaments into the hands of the lord of the said manor, To the use and behoof of the said C. D. and E. D., their heirs and assigns for ever, according to the custom of the said manor, and at the same Court the said C. D. and E. D. were duly admitted tenants thereof, To hold to them and their heirs at the will of the lord, and according to the custom of the said manor: AND WHEREAS the said L. M. died on the day of , 1883, whereupon the said A. B. became and now is equitable tenant for life in possession of the said copyhold hereditaments: AND WHEREAS [*contract for sale, operative part and parcels as in Precedent III., supra, p.* 158, *referring throughout to the premises as "the said copyhold hereditaments"*], TO HOLD the said copyhold hereditaments and all and singular other (if any) the premises hereinbefore expressed to be hereby conveyed unto the said P. R., his heirs and assigns for ever at the will of the lord, and according to the custom of the said manor, and subject to the fines, rents, heriots, and services of right accustomed, but discharged from all limitations, trusts, powers, and provisions of the hereinbefore-recited indenture of settlement, and from all estates, interests, and charges subsisting or to arise thereunder. [*Proviso limiting implied covenants, and acknowledgment and undertaking as in Precedent III., supra, p.* 158.] IN WITNESS, &c.

[*Schedules as in Precedent III., supra, p.* 158.]

VI.

Conveyance by Tenant for Life of Freehold (*a*) Lands vested in Trustees in Trust for Sale.

THIS INDENTURE is made the day of , 188 , Between A. B., of &c. [*tenant for life*], of the first part, C. D., of &c., and E. F., of &c. [*trustees of the settlement*], of the second part, and G. H., of &c. [*purchaser*], of the third part: Whereas by an indenture dated the day of , 187 , and expressed to be made between the said A. B., of the first part, K. L., of the second part, and the said C. D. and E. F., of the third part (being a settlement made in consideration of the marriage then intended and shortly afterwards solemnized between the said A. B. and K. L.), the said A. B. granted the parcels of land and hereditaments hereinafter described and expressed to be hereby conveyed (together with other hereditaments) unto the said C. D. and E. F. and their heirs, To the use of the said A. B., his heirs and assigns, until the said intended marriage, and from and after the solemnization thereof to the use of the said C. D. and E. F., their heirs and assigns, upon trust, with such consent or at such discretion as therein mentioned, to sell all the same hereditaments and to receive the moneys to arise from such sale, and after paying and retaining thereout the costs and expenses

(*a*) This form is applicable to copyholds, with certain variations, which can be gathered from Precedent V., *supra*, p. 163.

attending such sale to stand possessed of the residue of the said moneys and of the rents and profits of the said hereditaments until the sale thereof upon trust to invest such residue, and with power to vary the investments thereof, as therein mentioned, and upon trust to pay the income of such investments, and also the rents and profits of the said hereditaments until the sale thereof, unto the said A. B. and his assigns for his life, and after his death unto the said K. L. for her life, and after the death of the survivor of the said A. B. and K. L. upon certain trusts for the benefit of the children or issue of the said marriage, and in default of any such issue upon the trusts therein mentioned: AND WHEREAS there has, up to the present time, been no sale of the said hereditaments under the said trust for sale thereof: AND WHEREAS the said A. B., as tenant for life of the said hereditaments so as aforesaid settled in trust for sale by the hereinbefore-recited indenture, has, under the powers of the Settled Land Act, 1882, and since the said Act came into operation, contracted to sell the said hereditaments hereinafter expressed to be hereby conveyed (being a part of the hereditaments subject to the trusts aforesaid) to the said G. H. for an estate of inheritance in fee simple free from incumbrances for the sum of £ : AND WHEREAS the said C. D. and E. F. concur in these presents for the purposes hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ to the said C. D. and E. F., upon the execution of these presents, paid by the said G. H.

(the receipt whereof they the said C. D. and E. F. do hereby acknowledge, and from the same release and discharge the said G. H., his heirs, executors, administrators and assigns), he the said A. B., in exercise of the power by virtue of the Settled Land Act, 1882, subsisting in him as tenant for life under the said indenture of settlement, and of every or any other power in this behalf him enabling, doth hereby AS BENEFICIAL OWNER convey unto the said G. H., his heirs and assigns, ALL those parcels of land and hereditaments situate in the parish of , in the county of , delineated in the plan drawn in the margin of these presents, and therein coloured , and specified in the first schedule hereunder written, TO HOLD the same parcels of land and hereditaments unto and to the use of the said G. H., his heirs and assigns, in fee simple, discharged from all the limitations, powers and provisions of the hereinbefore-recited indenture of settlement, and from all estates, interests and charges subsisting or to arise thereunder. [*Proviso limiting liability of tenant for life under implied covenants for title as in Precedent III., sup. p.* 158.] AND the said C. D. and E. F. hereby acknowledge the right of the said G. H. to production of the documents of title specified in the second schedule hereunder written, and to make copies thereof and extracts therefrom. IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.
[*Here describe parcels.*]

THE SECOND SCHEDULE above referred to.
[*Here specify documents of title.*]

VII.

Mortgage of Settled Freeholds by Tenant for Life.

THIS INDENTURE is made the day of , 188 , Between A. B., of &c. [*tenant for life*], of the first part, C. D., of &c. and E. D., of &c. [*trustees of the settlement*], of the second part, and F. G. of &c. [*mortgagee*], of the third part: Whereas by an indenture dated the day of , 1883, the hereditaments therein particularly described (of which the hereditaments hereinafter expressed to be hereby demised form part), were limited and assured from and after the solemnization of the marriage then intended and shortly afterwards solemnized between the said A. B. and H. J. [*wife*], To the use of the said A. B. and his assigns during his life, without impeachment of waste, with remainder to the use of the said C. D. and E. D., their executors, administrators, and assigns, for the term of 500 years from the decease of the said A. B., without impeachment of waste, upon the trusts therein contained, with divers remainders over, And it was by the same indenture declared that the said C. D. and E. D., and the survivor of them, should be trustees thereof for purposes of the Settled Land Act, 1882: And whereas certain of the hereditaments settled by the same indenture were of copyhold tenure and have recently been agreed to be enfranchised: And whereas a sum of £1,000 is required to pay

for such enfranchisement, And the said F. G. has agreed with the said A. B. to advance the said sum of £1,000 for the purpose aforesaid, upon having the repayment thereof, with interest, secured to him in manner hereinafter expressed, and the said C. D. and E. D. concur in these presents for the purposes hereinafter appearing; Now THIS INDENTURE WITNESSETH, that in pursuance of such agreement, and in consideration of the sum of £1,000 upon the execution of these presents, paid by the said F. G. to the said C. D. and E. D., at the request and by the direction of the said A. B., and which sum is intended to be applied by the said C. D. and E. D. for the purpose aforesaid (the receipt of which sum of £1,000 they the said C. D. and E. D. do hereby acknowledge, and from the same by virtue of the powers conferred on trustees by the Settled Land Act, 1882, Do hereby release and discharge the said F. G., his heirs, executors, administrators, and assigns), He the said A. B., AS BENEFICIAL OWNER, in exercise of the power by virtue of the Settled Land Act, 1882, subsisting in him as tenant for life of the said hereditaments under the said indenture of settlement, and of every or any other power in this behalf enabling him, doth hereby bargain, sell, demise and convey unto the said F. G., his executors, administrators, and assigns, ALL that messuage with the several buildings, pieces of land, and hereditaments belonging thereto, known as Farm, situate in the parish of , in the county of , and particularly described in the schedule hereunder written, and on the map

drawn on these presents, and thereon coloured , such schedule and map being respectively extracts from the tithe commutation rent-charge apportionment for the said parish, and the map therein referred to, Together with the mines and minerals within and under the same, To HOLD the said premises unto the said F. G., his executors, administrators and assigns, for the term of 500 years, without impeachment of waste, subject to the proviso for redemption next hereinafter contained: PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED, that if the said C. D. and E. D., or the survivor of them, or the executors or administrators of such survivor, their or his assigns, or other the trustees or trustee for the time being of the settlement for purposes of the said Settled Land Act, 1882, shall, on the day of next, out of capital money in their hands arising under the same Act, pay to the said F. G., his executors, administrators or assigns, the said sum of £1,000, and if the said A. B., his executors, administrators or assigns, or other the person or persons who for the time being would, but for these presents, be entitled to the possession or rents and profits of the hereditaments hereinbefore expressed to be hereby assured, or any of such persons, shall on the same day pay to the said F. G., his executors, administrators or assigns, interest for the same sum after the rate of £ per cent. per annum computed from the date of these presents, then and in such case these presents and the demise hereby made shall cease and be void. AND the said A. B. doth hereby for him-

self, his heirs, executors and administrators, covenant with the said F. G., his executors, administrators and assigns, that he, the said A. B., shall and will during his life pay and keep down the interest to accrue due on the said principal sum of £1,000, or on so much thereof as shall for the time being remain owing on the security of these presents by equal half-yearly payments on the day of and the day of in every year: PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED, that as respects the reversion or remainder expectant on the life estate of the said A. B. of and in the hereditaments hereinbefore expressed to be hereby assured, and the title to and further assurance of the said hereditaments after his decease, the covenants for title implied by the said A. B. having assured the said hereditaments as beneficial owner shall not extend to the acts, deeds or defaults of any person or persons other than himself and his own heirs and persons claiming or to claim under or in trust for him, them, or any of them: AND PROVIDED ALSO, that nothing herein contained, nor the fact of the said F. G. having advanced the said sum of £1,000 as aforesaid, shall be construed to imply any covenant by any person party hereto to pay the principal moneys hereby expressed to be secured, or any part thereof, it being the intention of the parties hereto that the remedy of the said F. G. in respect of such principal moneys shall be against the hereditaments hereinbefore expressed to be hereby demised only. AND the said A. B. hereby acknowledges, &c. [*acknow-*

ledgment and undertaking as in Precedent III., supra.]

THE FIRST SCHEDULE above referred to.
[*Here describe parcels.*]

THE SECOND SCHEDULE above referred to.
[*Here specify documents of title.*]

VIII.

SETTLEMENT OF REAL ESTATE ADAPTED TO THE LAW AS ALTERED BY THE SETTLED LAND ACT (*a*).

THIS INDENTURE made the day of 188 , BETWEEN A. B., of &c. [*intended husband*], of the first part, C. D., of &c. [*intended wife*], of the second part, E. F., of &c., and G. H., of &c. [*trustees for purposes of the Settled Land Act, pin-money, and general purposes*], of the third part, and L. M., of &c., and N. O., of &c. [*trustees of portions term*], of the fourth part, WITNESSETH, as follows: that is to say—

1. In consideration of an intended marriage between the said A. B. and C. D., the said A. B. AS BENEFICIAL OWNER, and with the approbation of the said C. D., doth hereby grant unto the said E. F. and G. H. and their heirs, ALL those messuages, lands and hereditaments situate in the parish of , in the county of , delineated on the plan drawn in the margin of these presents and specified in the schedule hereunder written, TO HOLD the said premises unto the said E. F.

(*a*) This settlement should be engrossed in "book form."

and G. H. and their heirs, To the uses and upon the trusts and for the ends, intents, and purposes hereinafter declared of and concerning the same, that is to say—

(a) To the USE of the said A. B. and his heirs until the said intended marriage shall be solemnized.

(b) From and after the solemnization of the said intended marriage To the use of the said E. F. and G. H., their executors, administrators and assigns, for the term of *ninety-nine* years, without impeachment of waste, upon the trusts hereinafter declared concerning the same.

(c) From and after the determination of the said term, and in the meantime subject thereto and to the trusts thereof, To the use of the said A. B. and his assigns during his life, without impeachment of waste.

(d) From and after the decease of the said A. B. To the use and intent that in case the said C. D. shall survive the said A. B., she and her assigns may thenceforth receive during her life the yearly rent-charge of £ by way of jointure, and in bar of dower to be charged upon all the said premises, and to be payable quarterly on the usual quarter day—the first payment thereof to be made on the quarter day next after the decease of the said A. B., if the said C. D. shall be then living, but to consist of a proportionate amount only of

the said jointure calculated from the date of such decease.

(e) And subject and charged as aforesaid To the use of the said L. M. and N. O., their executors, administrators and assigns for the term of 1,000 years, to commence from the decease of the said A. B., without impeachment of waste, upon the trusts hereinafter declared concerning the same. And from and after the expiration or sooner determination of the said term of 1,000 years, and in the meantime subject thereto and to the trusts thereof, To the use of the first and every other son of the said A. B. by the said C. D. successively in remainder, one after another, according to their respective seniorities in tail male.

(g) And subject to the uses aforesaid, To the use of the said A. B., his heirs and assigns for ever.

2. The said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, or other the trustees or trustee for the time being of the said term of ninety-nine years hereinbefore limited (who are hereinafter called the "trustees or trustee of the ninety-nine years term"), shall during the joint lives of the said A. B. and C. D. out of the rents and profits of the hereditaments comprised in the said term, or by sale, mortgage, or demise of the whole or any part thereof for all or any part of the said term, levy and raise the clear annual sum of £ , and pay the same to the said C. D. for her separate use, by way of pin-money, without

power of anticipation—the said annual sum to be paid by equal quarterly payments, on the usual quarter days, the first payment thereof to be made on the quarter day next after the solemnization of the said intended marriage—but to consist of a proportionate amount only of the said pin-money calculated from the date of the solemnization of the said marriage. But if the said C. D. shall die on any day not being one of the said quarterly days of payment, leaving the said A. B. her surviving, her executors or administrators shall not be entitled to any proportionate part of the said annual sum for the period between the day of the said intended marriage or the last quarterly day of payment (as the case may be) and the day of the decease of her, the said C. D. And, subject to the said annual sum, shall permit the rents and profits of the said hereditaments to be received by the person or persons for the time being entitled to the said hereditaments in reversion, immediately expectant upon the said term of ninety-nine years.

3. The hereditaments comprised in the said term of 1,000 years hereinbefore limited shall be charged with the payment, after the decease of the said A. B., or in his lifetime upon his request, of such sum of money for the portion or portions of the younger child or younger children of the now intended marriage, or his, her, or their issue as is next hereinafter mentioned (that is to say), If there shall be one younger child, and no more, the sum of £5,000, If there shall be two younger children, and no more, the sum of £8,000, And if there shall be three or more

younger children the sum of £10,000, to be held, paid and applied in manner following, that is to say:—

(a) The said sum of £5,000, £8,000, or £10,000 (as the case may be), shall vest in and be payable to the younger child, or all or any of the younger children of the now intended marriage, or any child or children born during the life of the said A. B., or any such younger child or younger children at such age or ages, or time or times, not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage, and if more than one, in such shares (not exceeding, however, for any one child and his or her issue, £5,000, nor for any two children, and their issue between them, £8,000), upon such conditions and in such manner as the said A. B. shall by any deed, with or without power of revocation and new appointment, or by his will appoint. And in default of such appointment, and so far as any such appointment shall not extend the sum of money charged as aforesaid, shall go and belong to the younger child, or all the younger children of the now intended marriage, who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, and if more than one in equal shares.

(b) No child who, or any of whose issue, shall

take any share under any such appointment as aforesaid, shall, in default of appointment to the contrary, take any share of the unappointed part of the sum hereby provided for portions without bringing the share or shares appointed to him or her, or to his or her issue, into hotchpot.

(c) No one child shall, by reason of the death of any other child, without having attained a vested interest as aforesaid or otherwise, have or be entitled to more than £5,000 for his or her portion, and no two children to more than £8,000 between them for their portions; and if the sum to which any one child, or any two children, would, but for this proviso, have become entitled shall exceed £5,000 or £8,000 (as the case may be), the excess shall sink into the hereditaments comprised in the said term, and cease to be charged thereon. And for the purpose of this proviso, any portion taken by the issue of a younger child under any such appointment as aforesaid, shall be considered as part of the portion of the parent of such issue.

(d) The terms "younger child" and "younger children," used in this article, mean and include every daughter of the now intended marriage, and also every son of the now intended marriage, not being at his birth, or becoming during his minority, an eldest or only son for the time being entitled

under the limitations of these presents to the hereditaments hereby settled for an estate in tail male in possession, or in remainder immediately expectant on the decease of the said A. B.; and so that, if a son who shall be an eldest or only son entitled as aforesaid when he attains the age of twenty-one years shall die in the lifetime of the said A. B., the representatives of such son shall not be entitled to a portion under the foregoing charge, and so also that a son, being a younger child, when he attains the age of twenty-one years shall not lose his portion by reason of his afterwards, and in the lifetime of the said A. B., becoming an eldest or only son entitled as aforesaid.

(e) In default of any appointment by the said A. B. to the contrary, the portions of younger children, or a younger child, under the foregoing charge shall, subject and without prejudice to the said term of ninety-nine years and to the life estate of the said A. B., be payable at the following times (that is to say): In the case of every son upon attaining the age of twenty-one years, and in case of every daughter upon her attaining that age, or marrying.

(f) If upon any portion becoming payable the full amount thereof cannot be then ascertained, then such a sum shall be paid in respect thereof as would be the amount of such portion if all the children

for the time being presumptively entitled to portions had then attained vested interests therein. And if such portion shall afterwards become increased by the death of any child, who shall die before attaining a vested interest, such increase shall be payable immediately upon the accruer thereof.

(g) Every portion shall bear interest after the rate of £4 per cent. per annum, from the time when the same shall become payable.

4. The trustees or trustee of the said term of 1,000 years shall by mortgage, sale, or other disposition of the hereditaments comprised therein, or any of them, for all or any part of the same term, or by or out of the rents and profits of the said hereditaments, or by any other reasonable ways or means (but subject and without prejudice to the said annual sum or yearly rent-charge of £ [*jointure*] payable to the said C. D. as aforesaid, and the legal powers, remedies and trusts for enforcing payment thereof), raise such sum or sums of money as, by virtue of the foregoing charge in that behalf, shall become payable for a portion or portions as aforesaid, at the time or respective times when the same shall so become payable, and shall pay and apply the moneys to be so raised accordingly.

5. It is hereby declared, that it shall be lawful for the trustees or trustee of the said term of 1,000 years, upon the request in writing of the said A. B. during his life, and after his death at the discretion of the said trustees or trustee, by all or any of the

ways and means aforesaid, to raise any part or parts, not exceeding together one moiety, of the presumptive portion of any son in the sum of money raisable for portions as aforesaid, and to apply the same for the advancement, preferment, or benefit of such son in such manner as the said A. B. shall request, or as the said trustees or trustee shall after the death of the said A. B. think fit.

6. It is hereby further declared, that the trustees or trustee of the said term of 1,000 years shall by some or one of the ways or means aforesaid, raise such sum or sums of money as shall from time to time be required for the purpose of paying the costs and expenses of and incidental to the execution of the trusts of the said term, and shall apply the moneys to be raised as last aforesaid in payment of such costs and expenses accordingly.

7. It is hereby further declared, that, subject to the foregoing trusts, the trustees or trustee of the said term of 1,000 years shall permit the rents and profits of the hereditaments comprised therein, or such part thereof as shall not from time to time be required for the purposes of the said trusts, to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the said term.

8. And it is hereby also declared and agreed, that if the said A. B. shall marry again, it shall be lawful for him at any time or times, either before or after each or any such future marriage (but subject to the said term of 1,000 years hereinbefore limited and the trusts thereof), by any deed

or deeds, with or without power of revocation and new appointment, or by his will, to appoint to each or any such future wife, in case she shall survive him, during her life for her jointure any annual sum or yearly rent-charge not exceeding the clear annual sum of £ , to be charged upon and yearly issuing out of the hereditaments hereby settled, or any part thereof, and to be paid at such times and in such manner as the said A. B. shall think fit, and with the usual powers and remedies for enforcing payment of the said annual sum or yearly rent-charge by distress and entry upon and perception of the rents and profits of the said hereditaments.

9. Provided also, and it is hereby declared and agreed, that if the said A. B. shall marry again it shall be lawful for him by any deed or deeds, with or without power of revocation and new appointment, or by his will, to charge the hereditaments hereby settled, or any part thereof, with any sum of money for the portion or portions of the child or all or any of the children of the said A. B. by such future wife or wives as aforesaid, or any issue of such child or children, such issue being born in the lifetime of the said A. B., not exceeding in the whole the sum hereinafter mentioned (that is to say): If there shall be but one such child the sum of £5,000, if there shall be but two such children the sum of £8,000, and if there shall be three or more such children the sum of £10,000, and with interest for the same respectively at any rate not exceeding £4 per cent. per annum from the time when the same portion or portions respectively shall become payable, and so that the

sum of money to be charged as aforesaid shall be vested in and paid to the child, children, or issue for whom the same shall be provided, or any of them, at such age or time, or respective ages or times, not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage, and if more than one, in such shares and in such manner as the said A. B. shall direct or appoint; Provided nevertheless, that no one child of the said A. B. by such future wife as aforesaid shall, by reason of the death of a brother or sister without having attained a vested interest, or under any appointment or otherwise, be entitled to more than the sum of £5,000 for his or her portion, and no two children to more than the sum of £8,000 between them for their portions, and for this purpose any share appointed to the issue of a child shall be considered as part of the portion of the parent of such issue; Provided also, that if any money shall become raiseable for the portions of the younger children of the now intended marriage under the trusts of the term of 1,000 years hereinbefore limited, the amount raiseable for the children or remoter issue of the said A. B. by any future wife or wives under any charge to be made pursuant to the power in that behalf hereinbefore contained, shall not exceed such a sum as, with the amount raiseable for the portions of the younger children of the now intended marriage, shall make up the sum of £15,000; and any charge made under the power last aforesaid which would give to the children of the said A. B. by any such future wife or wives a

greater amount than as last aforesaid, shall fail of effect as to the excess.

10. Provided always, and it is hereby declared, that if the said A. B. shall exercise the powers of charging hereinbefore conferred on him in favour of any child or children of any future marriage, it shall be lawful for him by the same or any other deed, or by his will, to direct or authorize the trustees or trustee of these presents, or of any term to be created for the purpose of securing any jointure appointed to any future wife, or of raising portions for any children of any such future wife or wives, to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son under any such charge as last aforesaid, and to apply the same for the advancement, preferment, or benefit of such son.

11. It is hereby declared and agreed, that, in addition to the statutory protection accorded to trustees, each of the trustees of these presents and of any term of years created hereby or hereunder shall be answerable only for losses arising from his own default and not for involuntary acts, nor for the acts or defaults of his co-trustees or co-trustee; And it is particularly declared that any trustee who shall pay over to his co-trustees or co-trustee, or do any act or make any omission enabling his co-trustees or co-trustee to receive any moneys for the purposes or any of the purposes of these presents, or of the Settled Land Act, 1882, shall not be obliged to see to the due application thereof, nor be subsequently rendered

liable by any express notice or intimation of the actual misapplication of such moneys, nor shall any of such trustees be liable for any loss arising from the act or default of any solicitor, agent, or broker employed by the said trustees or trustee for the purposes of the trusts of these presents, nor for any loss arising from the said trustees having invested any moneys under the trusts of these presents upon mortgage of any property to which less than a marketable title is shown by the mortgagor, nor shall they be obliged to investigate the lessor's title before investing any such moneys upon mortgage of leasehold property, nor shall the said trustees or trustee be bound to see to the performance or observance of nor to enforce any of the covenants, provisoes, or conditions contained in any lease under which any hereditaments for the time being subject to the trusts of these presents shall be held, nor to enforce any covenant, proviso, or condition which may be contained in any lease now existing or granted by the said trustees or trustee, or by the person for the time being entitled under the said Settled Land Act 1882, to grant such lease of any hereditaments subject to the trusts of these presents, nor be liable to any person interested hereunder for any loss or damage which may happen by the non-performance or non-observance thereof; And all damage or expenses which the said trustees or trustee may be liable to or may incur in respect of such hereditaments on any of such covenants, provisoes, or conditions, or the non-performance or non-observance thereof, shall

be charged upon, and be repaid to or retained by them or him out of, the property subject to the trusts of these presents.

12. And it is hereby further declared, that the powers exerciseable by virtue of the Conveyancing and Law of Property Act, 1881, sect. 42, during the minority of any person who would but for that section be beneficially entitled to the possession of the said premises shall be exerciseable by the said E. F. and G. H. and the survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee for the time being of the said term of *ninety-nine* years (hereinafter referred to as "the said trustees"), and the said trustees are hereby declared to be trustees of this settlement for purposes of the Settled Land Act, 1882, and also trustees for the general purposes of these presents.

13. And it is hereby also declared, that all powers and provisions which are by virtue of the Conveyancing Acts, 1881 and 1882, the Settled Land Act, 1882, or any other Acts, to be implied in settlements shall be deemed to be incorporated in these presents as if they had been fully set out therein.

14. Provided always, and it is hereby lastly agreed and declared, that if the said intended marriage shall not be solemnized within twelve calendar months from the date of these presents, then and in such case these presents, and the uses, trusts, powers, and provisions hereinbefore declared and contained, shall be void and of no effect, and the hereditaments hereby settled shall revert and

go to the use of the said A. B., his heirs and assigns, for ever. IN WITNESS, &c.

[*Schedule of parcels.*]

IX.

WILL DEVISING REAL PROPERTY IN STRICT SETTLEMENT ADAPTED TO THE LAW AS ALTERED BY SETTLED LAND ACT.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of &c.

1. I DEVISE all the messuages, lands, tenements, and hereditaments, and real estate, being freehold of inheritance of, to, or over which I shall at my death be seised, entitled, or have any power of disposition by will (except what I otherwise specifically dispose of by this my will, or any codicil hereto), To the use of my son D. B. during his life, without impeachment of waste, and after his decease to the use of each successively according to seniority of the sons of the said D. B. born during my life for the life of such son, without impeachment of waste, with remainder immediately after the decease of each such son (in priority to the life estate of his next brother), To the use of his first and other sons successively, according to seniority, in tail male, so that every elder son and his issue male shall be always preferred to and take before every younger son and his issue male; And after the failure or determination of the uses and estates hereinbefore

limited, To the use of the son and sons of the said D. B. born after my death successively according to seniority in tail male, but so that every elder son and his issue male shall be always preferred to and take before every younger son and his issue male; And in default of such issue of the said D. B., To the use of each successively according to seniority of my sons hereafter to be born during his life, without impeachment of waste, with remainder immediately after the decease of each such son (in priority to the life estate of his next brother), To the use of his first and other sons successively, according to seniority in tail male, so that every elder son and his issue male shall be always preferred to and take before every younger son and his issue male; And after the failure or determination of the uses and estates hereinbefore limited, To the use of my brother E. B. during his life, without impeachment of waste: And after his decease, To the use [*limitation in favour of the sons of E. B. similar to those above in favour of the sons of D. B., each son born in the testator's lifetime taking a life estate only*]; And in default of such issue of the said E. B., To the use of my own right heirs: Provided always, that no person who shall be *en ventre sa mère* at my death shall, for the purposes of the limitations hereinbefore contained, be considered as born during my life.

2. I HEREBY DECLARE that if any person who would, if this present declaration had not been inserted, be entitled to the possession or the receipt of the rents and profits of my said real estate

as tenant for life or in tail male by purchase shall be under the age of twenty-one years, then and so often E. F., of &c.; G. H., of &c.; and I. K., of &c. [*trustees*], and the survivors and survivor of them, and the executors or administrators of such survivor (hereinafter called "the said trustees or trustee") shall, during such minority, exercise all the powers of management and receipt and application of income conferred by sect. 42 of the Conveyancing and Law of Property Act, 1881, whether such section shall remain in statutory force or be repealed; And I hereby declare, that my said will is to be considered as a settlement within the meaning of the aforesaid section; and that in case any person, during whose minority such powers are exercised, being tenant for life or in tail male by purchase under this my will, dies while an infant, the accumulated fund arising during the minority of such person from income of the said premises and from investments of income, shall be held upon the trusts and with and subject to the powers and provisions applicable to moneys arising from sales under the power of sale conferred by the Settled Land Act, 1882.

3. I HEREBY DECLARE that every person hereby made tenant for life of the said premises may either before or after he shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates preceding his own estate, and to the powers annexed to such preceding estates, and to the estates which may have been limited in exercise of such powers), by

deed or will, or codicil, appoint to any wife or intended wife for her life or any less period any yearly rentcharge or rentcharges not exceeding in the whole for any one wife the sum of £ to be charged upon and payable out of all or any of the said premises; And I declare that the said power of jointuring may be exercised as often as any person for the time being entitled to exercise the same shall marry; Provided nevertheless that no rentcharge shall become a lien upon any of the said premises, or be payable, unless the person appointing the same shall be or become entitled to the possession, or to the receipt of the rents and profits of the said premises, or some issue of such person shall or would, if of full age, become so entitled; And also that the said premises shall not at any one time be subject to the payment of rentcharges exceeding in the whole the sum of £ , and that such rentcharges shall have priority of payment according to the priority in order of limitation of the respective estates of the several persons exercising the said power; and

4. I ALSO DECLARE that every person hereby made tenant for life of the said premises may either before or after he shall be entitled to the possession, or to the receipt of the rents and profits thereof (but subject to the estates preceding his own estate therein, and to the powers annexed to such preceding estates, and to the estates which may have been limited in exercise of such powers), by deed, or will, or codicil, charge all or any of the said premises with the payment of a portion or portions for his child, or all or any of his

children (other than an eldest or only son being entitled under this my will to the said premises for the first estate for life or in tail male) of any sum or sums not exceeding in the different events herein specified the different sums hereinafter mentioned (that is to say), If there shall be but one such child (other than as aforesaid), the sum of £ , If there shall be but two such children (other than as aforesaid) the sum of £ , If there shall be but three such children (other than as aforesaid) the sum of £ , And if there shall be four or more such children (other than as aforesaid) the sum of £ to be an interest or interests vested in, and to be paid to, such child or among such children or any one or more of them at such times and in such manner and form in every respect as the person, for the time being, exercising this power shall appoint; and may by deed, or will, or codicil, charge the premises charged with such portion or portions respectively, with the payment of any clear annual sum or sums not exceeding the interest of the portion or portions, after the rate of £ per cent. per annum, to be applied for the maintenance or education of the child or children for whom such portion or portions shall be intended, until such portion or portions shall become payable in such manner in every respect as the person, for the time being, exercising this power shall direct; And may in order to provide for the raising and payment of such portion or portions and annual sum or sums by deed, or will or codicil, appoint the premises charged therewith to

any person or persons for any term or terms of years, with or without impeachment of waste, upon the usual trusts for securing payment of the same; Provided nevertheless that no portion or annual sum shall become a lien upon all or any part of the said premises, or be payable, unless the person appointing the same shall be or become entitled to the possession or to the receipt of the rents and profits of the said premises, or some issue of such person shall, or would if of full age, become so entitled; And also that the said premises shall not at any one time be charged with the payment of a greater sum in the whole for portions than the sum of £ , and that such portions respectively shall have priority of payment according to the priority in order of limitation of the respective estates of the several persons exercising the said power.

5. I DEVISE all the copyhold messuages, lands, tenements and hereditaments of, to or over which I shall at my death be seised or entitled or have any power of disposition by will (except what I otherwise specifically dispose of by this my will or any codicil hereto), To the use of the said E. F., G. H., and I. K., their heirs and assigns, according to the custom of the manors whereof the same may be respectively holden, and at and under the accustomed rents and services, Upon such trusts and subject to such powers, provisions and declarations as shall correspond with the uses, trusts, powers, provisoes and declarations hereinbefore limited and declared concerning my freehold hereditaments hereinbefore devised, as nearly as the different tenure and quality of the premises and the

rules of law and equity will permit, but not so as to increase or multiply charges or powers of charging.

6. I DEVISE AND BEQUEATH all the leasehold messuages, lands, tenements and hereditaments of, to, or over which I shall at my death be seised, possessed or entitled, or have any power of disposition by will (except what I otherwise specifically dispose of by this my will or any codicil), unto the said E. F., G. H. and I. K., their executors, administrators and assigns, for all such estate, term and interest as I shall have therein respectively at my death, Upon trust that the said trustees or trustee shall, by and out of the rents and profits thereof, pay the rents and annual sums reserved by the leases thereof respectively, and perform and observe the covenants by the lessee and conditions in the said leases respectively contained; And subject thereto shall hold the same premises Upon such trusts and subject to such powers, provisions and declarations as shall correspond with the uses, trusts, powers, provisoes and declarations hereinbefore limited and declared concerning my freehold hereditaments hereinbefore devised, as nearly as the different tenure and quality of the premises and the rules of law and equity will permit, but not so as to increase or multiply charges or powers of charging, and so that such of the same premises as are held by a lease for years shall not vest absolutely in any person hereby made tenant in tail male by purchase of the said freehold premises unless such person shall attain the age of twenty-one years, but on the death of such person

under that age shall go, devolve and remain in the same manner as the same would have done had they been freeholds of inheritance included in the devise hereinbefore contained.

7. [*Here insert general bequest of personal estate other than leaseholds in trust for sale and conversion and distribution among younger children or otherwise, as may be desired, with powers of advancement.*]

8. I HEREBY DECLARE that, in addition to the protection accorded to trustees by statute, the said trustees or trustee shall respectively be answerable only for losses arising from their or his respective defaults, and not for involuntary acts, nor for the acts or defaults of their or his co-trustee or co-trustees, and particularly that they or he shall not be liable to see to the due application of any moneys which they or he shall pay over to their or his co-trustee or co-trustees, or which, by any act or omission on their or his part, their or his co-trustee or co-trustees shall be enabled to receive, for the purposes or any of the purposes of this my will, nor be subsequently rendered liable by any express notice or intimation of the actual misapplication of such moneys; And further, that the said trustees or trustee respectively shall not be liable for any loss arising from their having invested any moneys under the trusts of this my will upon mortgage of any property to which less than a marketable title is shown by the mortgagor, and that they or he shall not be obliged to investigate the lessor's title before investing any such moneys upon mortgage of leasehold property, and that they or he shall not be bound to see to the per-

formance or observance of or to enforce any of the covenants, conditions or provisoes contained in any lease under which any hereditaments for the time being subject to the provisions of this my will shall be held, or to enforce any covenant, condition or proviso which may be contained in any lease existing at the date of my death or granted by the said trustees or trustee of any hereditaments subject to the trusts of this my will, or be liable to any beneficiary under this my will for any loss or damage occurring through the non-performance or non-observance thereof, and that all damages and expenses which the said trustees or trustee may respectively be liable to or incur in respect of such hereditaments on any of such covenants, conditions or provisoes, or the non-performance or non-observance thereof, shall be repaid to or retained by them or him out of property subject to the trusts of this my will.

9. I HEREBY FURTHER DECLARE, that the said trustees or trustee shall be trustees of this my will for the purposes of the Settled Land Act, 1882.

10. I APPOINT the said E. F. and G. H. to be executors of this my will.

11. AND LASTLY, revoking all former and other wills, I declare this to be my last will and testament. IN WITNESS, &c.

X.

Building Lease (*a*) for Ninety-nine Years granted by a Tenant for Life under the Settled Land Act (*b*).

THIS INDENTURE made the day of , 188 , Between A. B., of &c. [*lessor*], of the one part, and C. D., of &c. [*lessee*], of the other part, Witnesseth as follows, that is to say:—

1. In consideration of the rent and lessee's covenants hereinafter reserved and contained, the said A. B., in exercise of the power subsisting in him by virtue of the Settled Land Act, 1882, as tenant for life of the hereditaments hereinafter described and expressed to be hereby demised, and of every or any other power in this behalf him enabling, doth hereby demise unto the said C. D., his executors, administrators, and assigns, All that piece or parcel of ground situate in the parish of , in the county of , containing in the whole about acres, roods, and delineated and described as to the abuttals and linear dimensions thereof, in the plan thereof, drawn in the margin of these presents, and therein coloured pink, To hold the premises expressed to be hereby demised unto the said C. D., his executors,

(*a*) It is considered unnecessary to give a precedent of an agricultural or an occupation lease, as (so far as the Act is concerned) such a document is similar to this precedent, the covenants only being varied.

(*b*) Under sect. 7, the lessee must execute and deliver to the tenant for life a counterpart of this lease. It will be found most convenient to engross this lease in "book form."

administrators, and assigns, from the day of , 1883, for the term of ninety-nine years thence next ensuing.

2. The said C. D. shall yield and pay for the said premises during the said term the yearly rents following, clear of all deductions (except the landlord's property tax, if any), that is to say, for the first two years of the said term, the yearly rent of £ , and for the third and every subsequent year of the said term the yearly rent of £ , the said rents to be paid by equal half-yearly payments on the 24th day of June and the 25th day of December in every year, the first half-yearly payment of the said rent of £ to be paid on the day of , 188 , and the first half-yearly payment of the said rent of £ to be paid on the day of , 188 .

3. The lessee doth hereby covenant with the lessor in manner following, that is to say:—

(a) That the lessee will pay to the lessor the yearly rent hereby reserved, at the times and in manner hereinbefore specified.

(b) That the lessee will also during the said term pay all taxes, rates, charges, assessments, and outgoings which shall be payable for or in respect of the said premises hereby demised (except the landlord's property tax, if any).

(c) That the lessee will also at his own cost, and at an outlay and expense of (*a*) £

(*a*) This amount should be sufficient to ensure the property with the buildings when completed being worth at least five times as much yearly as the ground-rent under this lease. (See note to sect. 8, sub-s. 3, p. 52, *sup.*)

at the least, within the space of two years from the said day of , 1883, erect and completely finish fit for habitation and use upon the said parcel of ground in a good substantial and workmanlike manner, of the best materials, and to the satisfaction of the surveyor of the lessor, and according to plans and elevations to be first approved of by the lessor, or the agent or surveyor of the lessor, ten dwelling-houses and no more, with proper and sufficient out-buildings and conveniences thereto, AND will expend in the erection of each such house £ at the least.

(d) That the lessee will also at the like cost forthwith after the completion of any of the said dwelling-houses to be erected as aforesaid, insure and keep insured the same against loss or damage by fire, to at least two-thirds of the value thereof, in the joint names of the lessor and lessee, and either in conjunction or not in conjunction with the name or names of any underlessee or underlessees, or other person or persons interested therein, in such office as the lessor shall approve; and upon the request of the lessor, or his surveyor, steward, or agent, from time to time, produce and show to him or them the receipt for the premium for such insurance for the then current year, and will so often as such dwelling-house, or any part thereof, shall be destroyed or damaged by fire, forthwith

rebuild or reinstate the same, under the direction of the lessor or his surveyor.

(e) That the lessee will also at all times at the like expense during the said term, keep all the said dwelling-houses and premises in good and substantial repair, and keep in good order all sinks, privies, and drains belonging to or draining the same, and the same in such good and substantial repair and order, at the end or sooner determination of the said term, peaceably surrender and yield up unto the lessor, together with all things in the nature of, or usually considered, landlord's fixtures, which at any time during the said term shall be affixed and belong to the premises.

(f) That the lessee will also at all times during the said term pay and allow a reasonable share and proportion for and towards the costs and expenses of making, supporting, and repairing [the intended roadway at the north of the said piece of ground, and] all or any pavements, fences, and party-walls, sewers and drains, which now, or at any time during the said term, shall belong to the said premises, or any part thereof, in common with other dwelling-houses, lands, or properties, such proportion to be ascertained by the surveyor of the lessor, and to be recoverable as rent in arrear.

(g) That it shall be lawful for the lessor and for any person or persons to be deputed

by him, with or without workmen or others, twice or oftener in every year during the said term, at reasonable times in the daytime, to enter upon the said premises or any part thereof to view the state and condition thereof, and also at any time during the last seven years of the said term to take a schedule of the fixtures and things in and upon the premises (not being tenant's fixtures).

(h) That it shall be lawful for the lessor and his tenants, or occupiers of the houses adjoining to the said premises, and the workmen of such lessor, tenants, or occupiers, at reasonable times in the daytime, to come into or upon the said premises, or any part thereof, to repair such adjoining houses as often as occasion shall require.

(i) That the lessor and his tenants shall have liberty of watercourse in and through the said premises hereby demised to carry off the water from his other houses, which are, or may be, contiguous or near to the said premises; and that if need be the tenants of such other houses shall be permitted to come into and upon the said premises hereby demised, to empty and cleanse the cesspools, gutters, sewers, and drains of, and belonging to, such other houses.

(j) That the lessee will not without the consent in writing of the lessor exercise, or carry on, or permit, or suffer to be exer-

cised or carried on, upon any part of the premises hereby demised, any trade or business whatsoever, but shall keep the said dwelling-houses and premises strictly as private dwelling-houses.

(k) That the lessee shall not, without such consent as last aforesaid, assign or underlet the said premises hereby demised, or any part thereof, or permit or suffer the same, or any part thereof, to be assigned or underlet unto any person or persons whomsoever.

4. It is hereby provided, agreed, and declared, that if the said yearly rent, or any part thereof, shall be in arrear for the space of *thirty days* next after any of the said days whereon the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if there shall be any breach of any of the covenants hereinbefore contained, and on the part of the lessee to be observed and performed, then, and in any of the said cases, it shall be lawful for the lessor at any time thereafter into and upon the said demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have, possess, and enjoy as of the lessor's former estate.

5. And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, and also, so far as he is able without personal obligation in respect of their or any of their omissions, for the person or persons who may for the time being come within the meaning of the

term lessor as defined by these presents, covenant with the lessee that he the said A. B. is tenant for life of the said demised premises within the meaning of the Settled Land Act, 1882, and that the lessee paying the rent hereby reserved as and when the same ought to be paid, and observing and performing all covenants and conditions herein contained, and on the lessee's part to be observed and performed, shall hold and enjoy the said premises without interruption or disturbance by the lessor.

6. And lastly it is hereby declared that the expression "the lessor" hereinbefore used means the said A. B. and his assigns, or other the person or persons for the time being entitled to the premises hereby demised in reversion expectant on the term hereby granted, and the expression "the lessee" means the said C. D., his executors, administrators, and assigns.

SCHEDULE.

XI.

MINING LEASE GRANTED BY A TENANT FOR LIFE OF MINES IN STAFFORDSHIRE UNDER THE SETTLED LAND ACT (*a*).

THIS INDENTURE made the day of , 188 , BETWEEN H. V. of &c. [*tenant for life*] of the first part, F. W. of &c. and R. L.

(*a*) This lease should be engrossed in "book form."

of &c. [*trustees*] of the second part, and T. S. of &c. [*lessee*] of the third part; WITNESSETH as follows, that is to say:—

1. In the construction of these presents the term "lessor" shall mean the said H. V. and other the person or persons for the time being entitled to the hereditaments intended to be hereby demised in reversion immediately expectant on the determination of the term intended to be hereby granted, and the term "lessee" shall mean the said T. S., his executors, administrators, and licensed assigns, and the term "trustees or trustee" shall mean the said F. W. and R. L. and the survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee (for the purposes of the Settled Land Act, 1882) for the time being of an indenture of settlement dated &c.

2. By virtue of the powers in this behalf conferred on him as tenant for life in possession under the said settlement of the day of , 18 , by the Settled Land Act, 1882, the said H. V. doth hereby grant and demise unto the said T. S., his executors, administrators, and licensed assigns, the following hereditaments, profits, powers, easements, and things; that is to say:—

(a) All mines of coal, ironstone, fire-clay, and brick-clay now in or under all those pieces of land situate at in the parish of in the county of Stafford, described with their respective quantities in the schedule hereunder written and de-

lineated on the plan hereto annexed and thereon coloured pink.

(b) Full and free power to work, win, raise, carry away, and dispose of the mines and minerals hereby demised, and for that purpose to try and discover the same by the usual mining operations in, upon, or under the said surface premises.

(c) For the foregoing purposes or any of them, or the avoiding or carrying away of water or foul air, or for calcining or burning the demised coal, ironstone, and clay, or for any other purpose necessarily or usually in the district incidental thereto, or otherwise authorized by these presents, full and free powers as follows (that is to say): (1) To enter upon and occupy any part or parts of the said surface premises, and to make, erect, and maintain in or upon the said premises any shafts, pumps, trenches, way-gates, water-gates, water-courses, drifts, and other works; and also any buildings, plant, and machinery, and to have sufficient room on the said surface premises for placing and stacking the minerals, earth, and rubbish from the said mines; (2) At all times to pass and re-pass over the said surface premises, either with or without any other person or persons or means of transport; (3) To dig from the said demised and surface premises respectively stones, sod, peat, clay, and other spar; (4) To make, lay down, and maintain on and through

the same respective premises, canals, roads, railways, tramways, and other ways, and to use any existing roads and ways thereon; (5) Generally to use and occupy such portions and portion of the said demised mines and surface premises respectively, and in, upon, or under the same respectively to make and do all such acts and things as the lessee shall judge expedient for the purposes aforesaid or any of them.

3. Provided always, and it is hereby declared, that in the exercise of the aforesaid powers, the lessee shall do as little damage as possible to the surface hereby demised consistent with the powers hereby granted, and shall give to the lessor one calendar month's written notice of the quantity and situation of all surface land required by the lessee as aforesaid, and shall also previously to the expiration of such notice compensate the tenants and occupiers of such land for all damage done to crops and all unexhausted manures in or upon the land so required to be used or occupied as aforesaid, and also compensate all tenants or occupiers for the time being of the said premises or any other hereditaments of the lessor for any other reasonable claim occasioned by the exercise of the powers or otherwise by the working of mines and minerals hereby granted and demised; the amount of compensation in case of disagreement to be settled by arbitration.

4. There are excepted and reserved out of this demise the following hereditaments, profits, easements, powers, matters, and things, that is to say:—

(a) All commons, common of pasture and wastes, and also all timber and other trees, and underwood and other wood now or hereafter growing upon the said surface premises, whether used or occupied under the foregoing powers or not.

(b) All such and such parts of the respective mines hereby demised as lie under or are required for the support of the buildings shown on the said plan.

(c) Such and the same or the like powers for the lessor and all persons authorized by the lessor (and as fully and freely) for working, winning, raising, and carrying away, and disposing of any mines, minerals, or other substances, whether of the same or the like, or a different nature from those hereby demised, and whether lying under or adjoining, or above, or intermixed with those hereby demised or otherwise howsoever, which are in, under, or adjoining the said surface premises, save the mines and minerals hereby demised, and for trying for and for discovering the same, and for carrying away water or foul air, or for any other purpose necessarily or usually in the district incidental to the foregoing purposes or any of them, or otherwise authorized hereby, as are hereinbefore made exerciseable by the lessee in reference to the mines and minerals hereby demised.

(d) Full and free power for the lessor to view

and mark, fell, top, stub up, convert into charcoal, and carry away the timber and other trees, underwood, and other wood hereby excepted, and to make sawpits, and dig turfs, earth, and other materials for converting and charcoaling the same.

(e) Full and free power for the lessor for all or any of the purposes comprised in the foregoing reservations, and generally for any other purpose, or purposes and either with or without any other person or persons or any means of transport, to enter upon the said surface premises, whether used or occupied under the foregoing lessee's powers or not, and to use and occupy such portions and portion thereof and to make and do all such acts and things as he shall judge expedient, but so as in the exercise of the rights and powers hereby reserved, to interfere as little as may be with the user of the said surface premises by the lessee pursuant to the foregoing powers.

(f) Full and free power, either alone or with any other person or persons, to hawk, hunt, shoot, course, fish, fowl, and sport in and over the said surface premises, whether used or occupied as aforesaid or not, and also to use for any purpose any ways now existing, or laid down, or made under the power hereby granted.

(g) Full and free power for the lessor for the purpose of working any mines or minerals

not lying in or under the said surface premises, or generally for any purpose whatsoever to have and use, and also to grant to any other person or persons any wayleave, or other right of way, or of laying down, making, and maintaining ways of all kinds through and over the said demised and surface premises, whether used or occupied as aforesaid or not respectively; but so as in the user of any wayleave, or right of laying down, making, maintaining, or using ways, under this or the foregoing reservation, to interfere as little as may be with the working under this demise.

5. The said premises (except as aforesaid) shall be HELD by the lessee from the 30th day of September, 1883, for the term of sixty years, but determinable as hereinafter mentioned.

6. The lessee shall yield and pay the rents, royalties and payments hereinafter specified (and which the lessor hereby declares to be the best rents that can be reasonably obtained), on each of the quarterly days hereinafter mentioned (commencing as hereinafter mentioned), that is to say—

(a) For each ton of coal, lumps, and slack, raised during the then preceding quarter (except as hereinafter in that behalf provided) the royalty of 8*d.*:

(b) For each ton of ironstone raised during the then preceding quarter, the royalty, in case

of brown ironstone, of 1*s.*, and, in case of any other ironstone, of 1*s.* 6*d.* (*a*).

(c) For each ton of fire clay raised during the then preceding quarter, the royalty of 6*d.*

(d) For all bricks which shall be manufactured from the surface, or red brick, clay, raised or gotten from the said demised premises, and which shall be sold or otherwise disposed of from and off the premises (but not including such bricks as shall be used on the premises for any purpose hereby authorized) the royalty of 1*s.* 6*d.* per 1,000 bricks (but such 1,000 not to contain in the whole more than three cubic yards of clay).

(e) Also, in case the aggregate royalties for the then preceding quarter shall not amount to the minimum sum hereinafter stipulated to be payable for such quarter, and until the mines and minerals hereby demised shall become, from whatever cause, incapable of supplying such quantity of produce as at the royalties aforesaid will make up that sum (such incapability in case of disagreement to be determined by arbitration) a mine rent, or sum of such amount, as, with the aggregate royalties payable for the then preceding quarter, will make up the minimum sum hereinafter stipulated for such quarter, or if there shall be no royalties,

(*a*) Sometimes the royalties on coal and ironstone are increased, in case prices rise above a certain fixed standard.

then a mine rent or sum of such amount as such minimum sum hereinafter stipulated for such quarter; it being the intent of the parties hereto and being hereby stipulated, that from the date on which the said mine rent is hereinafter stipulated to commence running the minimum quarterly aggregate of royalties and mine rent or royalties only, or mine rent only (as the case may be), payable in respect of the mines and minerals hereby demised, shall be during the first year from the date on which the said mine rent is hereinafter stipulated to commence running, the sum of £50 per quarter; during the second year from the date last aforesaid, £60 per quarter; during the third year from the date last aforesaid, £80 per quarter; during the fourth year from the date last aforesaid, £90 per quarter; and during every year after the fourth from the date last aforesaid, the sum of £100 per quarter.

(f) Also, as and for all such surface premises as shall, for the time being, be entered upon for any purpose authorized by the powers hereby demised (whether after such entry the same or any part thereof shall or shall not be in fact used or occupied for any such purpose, and notwithstanding any discontinuance of such use or occupation, if commenced), the further rent or sum of 60*s.* per acre per annum, and the same in proportion for a greater or less

quantity; and so that in every such case of entry, the acreage or proportionate part thereof to be paid for under this clause, shall be that of the entire field or plot (as delineated in outline on the said plan) on any portion of which such entry shall be so made.

7. It is hereby declared and agreed, that in accordance with the provisions in this behalf of the 11th section of the Settled Land Act, 1882, the said several rents and royalties hereby reserved and made payable, shall be paid by the lessee as follows: that is to say, three fourth parts thereof shall be paid to the lessor, and the remaining one fourth part thereof shall be paid to the trustees or trustee (*a*); provided always, that if at any time during the continuance of this demise the lessor shall be a person entitled to the hereditaments hereby demised in reversion expectant on the determination of the term hereby granted for an estate of inheritance in fee simple, then and in such case the whole of the said rents and royalties shall thenceforth be paid to the lessor, and no portion thereof to the trustees or trustee.

8. It is hereby declared, that the several quarterly payments hereby reserved shall be made on the 1st day of January, the 1st day of April, the 1st day of July, and the 1st day of October in every year, the first of such payments as regards the said mine rent being made on the 1st day of January, 1884 (it being the intent of the parties hereto,

(*a*) This is on the assumption that the lessor is not impeachable for waste.

that the same rent shall commence running from the 30th day of September, 1883): And the first of such payments as regards the said royalties shall be made or deemed to have become payable on the 1st day of January, 1884 (it being the intent of the parties hereto that the same shall begin to be payable as from the commencement of the term hereby granted): And the annual surface rent hereby reserved shall be paid by equal payments, on the same quarterly days, the first payment thereof being made on the 1st day of January, 1884: And the whole of the said royalties, rents, and other payments hereby reserved, shall be paid without deduction, except landlord's property tax.

9. It is hereby further declared and agreed, that the said royalties and mine rents shall be subject to the provisions hereinafter contained: (that is to say,)

(a) No payment shall be made under the foregoing reservations for slack and black coal used in working any plant or machinery erected on the said surface lands, under the foregoing powers for drawing water or foul air and materials from the said mines; nor for slack and black coal used in burning bricks to be employed on the premises for any purpose authorized or required by these presents.

(b) Each collier (but not boys) employed *bonâ fide* in the said works may have one ton per calendar month of coal free of royalties.

(c) From the date from which the said mine

rent is hereinbefore stipulated to commence running, an excess of royalties in any quarter above the minimum sum hereinbefore stipulated for such quarter may be applied by the lessee in reimbursing himself (so far as the same will extend) the amount, not already repaid under this proviso, of the mine rent paid by him under the foregoing reservations in respect of any previous quarter or quarters for which the aggregate royalties shall not have amounted to the minimum sum hereinbefore stipulated for such quarter.

(d) Without prejudice to, and cumulatively upon, any power of distress exerciseable otherwise than by virtue of this proviso, the lessor may, when any rent or royalty hereby reserved, or any part thereof respectively, shall (whether legally demanded or not) be twenty-one days in arrear, enter, seize, distrain and sell and dispose of in the same manner as landlords may for rent in arrear, any plant, machinery, engines, utensils, coal and ironstone, and other live and dead stock, chattels and effects in or upon the said premises, or any mine or mines or works of the lessee worked in connection therewith, and out of the moneys arising thereby discharge all such arrears and all costs and expenses, rendering the surplus, if any, to the lessee.

10. The lessee doth hereby covenant with the

said H. V., and also as a separate covenant with the other persons and person who may for the time being come within the meaning of the term lessor as hereinbefore defined, and also as a separate covenant with the trustees and trustee in manner following, that is to say :—

(a) That the lessee will duly and punctually pay the royalty, rents, and other payments hereinbefore reserved and made payable in manner hereinbefore appointed for payment thereof, and will make such payments on the days when the same ought to be paid, pursuant to these presents, without deduction except as aforesaid.

(b) That the lessee will also pay and discharge and keep the lessor and the lessor's estates indemnified against all tithes, rates, and taxes, and outgoings except as aforesaid, which during the continuance of this demise shall be charged upon or payable in respect of the said demised premises, or by the lessor's tenants in respect thereof, or in respect of the rents, royalties, and other payments hereby reserved, or any of them.

(c) That the lessee will also at his own cost set up, and during the continuance of this demise maintain, in some convenient place on the said surface, proper weighing machines for weighing such of the minerals to be raised from the said mines pursuant to this demise as are hereby made subject to

any royalty; and will, before carrying away any such minerals, weigh the same at such machines.

(d) That the lessee will also keep and enter in proper books, to be kept at some convenient place on the demised premises, and to be at all times open to the inspection of the lessor and the trustees or trustee, or any persons or person whom he or they may authorize in that behalf (all of whom may take copies thereof), the weight of all minerals raised, and subject to royalty as aforesaid, and also the amount thereof sold and disposed of for the time being, and will on or within fourteen days next after each of the quarterly days aforesaid, at the lessee's own cost, make out and transmit to the lessor, and the trustees or trustee, a correct copy of the foregoing items of account for the then preceding quarter; or, as regards the account of minerals sold and disposed of, will, if so required, at the end of each or any month of this tenancy, or within ten days therefrom, and at the like cost, make out and transmit to the lessor, and the trustees or trustee, a correct copy of such accounts for the then preceding month, or other period since such copy was last furnished.

(e) That the lessee will, at his own cost, during the continuance of this demise, maintain in good order and condition all mining or other works now or for the time

being constructed or used for any purpose authorized by this demise or the powers hereby granted, and which shall be necessary and proper to be maintained, such necessity or propriety to be determined, in case of disagreement, by arbitration; And generally will, during the continuance of this demise, and at such cost as aforesaid, maintain in good order and condition, so far as is consistent with the mining operations hereby authorized, the said demised mines and surface premises; And the same respective premises, with all mining or other works (but not machinery and plant) by these covenants required to be maintained, will in such good order and condition as aforesaid, so far as is consistent with the mining operations aforesaid, at the expiration or determination of this demise, peaceably and quietly yield up to the lessor.

(f) That the lessee will, on or before the 30th day of September, 1875, at his own cost, sink from the surface of the said premises, through the ironstone measure called the Blueflats, one, or two shafts, if necessary, of not less than eight feet each in diameter, and will forthwith at the like cost erect, fix, and maintain on the same premises substantial engines, pumps, and all other necessary machinery and plant, as well for carrying out and completing the sinking of the said shaft or shafts by the date

aforesaid, as for the proper working or draining of the said demised mines and minerals in a workmanlike manner.

(g) That the lessee will at all times during the continuance of this demise, work, win, and raise the said mines and minerals to the best of the lessee's ability, and according to the best practical method of mining in the district, and with safety to the said colliery, and also as regards the mines under or adjacent to any canal, or any roads, ways, or railways, with safety to the same, and pursuant and subject to the public or private Acts of Parliament, if any, for the time being in force in regard thereto.

(h) That the lessee will at all times during the continuance of the demise keep at some convenient place on the said surface premises, and at his own cost, proper plans, showing as well the working of the said mines for the time being as the state from time to time of the surface premises, such plan to be on the scale of not less than two chains to an inch; and correct sections in detail of the strata sunk through in the principal shafts; and will, if so required, at the end of each or any quarter of this tenancy, or within ten days therefrom, at the like cost, make out and transmit to the lessor and the trustees or trustee correct copies of the said plans and sections; And further, that at all reasonable

times the lessor and the trustees or trustee, and every person authorized by him or them in their behalf, may inspect and take copies of the said plans of working and sections.

(i) That the lessor may also at all reasonable times, and as well by night as by day (either with or without any other person or persons), enter upon the said hereby demised mines, and the said surface premises, and all mining or other works, for the time being constructed or used for any purpose hereby authorized, and view the state and condition thereof respectively, and the mode of working the said mines and minerals: And that the lessee and all persons in his employ will give every assistance to such entry and viewing, and all such explanations and information as may be required for the purposes thereof, and permit the free use of all machinery, plant, and implements, for the time being upon the premises for that purpose; and after each entry and viewing will re-convey the person or persons making the same, from and out of the said mines to the said surface; and that the lessee will forthwith, upon written notice by the lessor or his agent being left on the premises, alter and amend the mode of working in any particulars not in accordance with the covenants on their part hereinbefore contained, and which shall be specified by

such notice; and that in default of such alteration or amendment, the lessor may enter upon and stop the workings of the said mines and the selling of the produce therefrom, but the lessee's liabilities under this demise shall continue notwithstanding such entry and stoppage.

(j) That the lessee will not, either by interference with the mines hereinbefore reserved for the support of any houses or building now or hereafter erected on the said surface premises (and which the lessee shall at all times during the continuance of this demise leave unworked accordingly), or by any working hereby otherwise authorized, damage or endanger any such house or building, and so that (without prejudice to the absolute prohibition under this covenant) the lessee shall, in the event of every or any house or other building being so endangered or damaged, pay to the trustees or trustee or the lessor (in case he shall for the time being be tenant in fee simple of such house or building) compensation for the same, to be assessed by arbitration as hereinafter provided (but at the lessee's sole cost), and shall also keep the lessor indemnified against all legal and equitable proceedings, claims and demands by tenants, occupiers or others, and from all costs and damages, to be incurred or sustained by reason thereof.

(k) That, during the continuance of this demise,

the lessee will pay to the tenants or occupiers for the time being of the said surface premises such compensation for damage to crops and unexhausted manure at such times and in such manner as herein required, and will also pay to the tenants or occupiers for the time being of the said messuages and premises, or of any other hereditaments of the lessor, or of which the lessor may be tenant for life, compensation, at the times and in manner herein required, for any reasonable claim for damage to land or buildings now existing thereon, occasioned by the exercise of the powers hereby granted, or otherwise by the working the mines and minerals hereby demised, the amount of such compensation to be settled, in case of disagreement, by arbitration.

(l) That the lessee will keep the lessor indemnified from all legal and equitable proceedings, claims and demands under the provisions of the public or private Acts of Parliament, if any, for the time being in force in regard to any canal, or any roads or railways, the mines under or adjacent to which are hereby demised, or otherwise by reason of the working of the said mines, and from all costs and expenses in respect thereof.

(m) That the lessee will, at his own cost, from time to time, as and when any pit or shafts (not being a pit or shafts neces-

sary or proper to be left open for future working, or required to be left intact under the subsequent powers in that behalf) shall cease to be used for the purposes of this demise, fill up the same to the satisfaction of the lessor or his mining agent, and at the like cost, and to the like satisfaction, fence round with as little bank about the same as may be, all disused pits or shafts necessary or proper to be kept open for the future working or required to be left intact as aforesaid.

(n) That the lessee will, at the like cost and to the like satisfaction, as and when any ground used or occupied under the power hereby granted, for roads, tramways, railways, or other ways, or for any mining or other purpose pursuant to this demise (not being ground necessary or proper to be so used or occupied for the future working), shall cease to be so used and occupied, restore the same as nearly as may be to its former state and condition, filling up swags, and breaks, and replacing the whole of the said soil taken therefrom, and which shall accordingly, as and when any ground is first used or occupied under the foregoing powers, be cleared off to the depth of twelve inches (if of such depth), and placed in heaps and preserved until replaced as aforesaid, and also shall remove all such roads and ways as aforesaid, and also all heaps of earth and

rubbish raised from the said mines, levelling the same ground uniformly, and generally restoring the same to a state of cultivation as at present; Provided always, that in lieu of satisfying this covenant the lessee shall have the option of paying £30 per acre (exclusive of the cost of paring, removing, and preserving the soil in pursuance of the covenant in that behalf hereinbefore contained) for all ground subject to this covenant, as to which the same shall not be satisfied, and the same in proportion for a greater or less quantity.

(o) That at the expiration or determination of the said term the lessee will, upon receiving from the lessor six calendar months' written notice in that behalf (which shall be sufficient if left upon some part of the respective premises hereby demised), leave upon the said respective premises for the use of the lessor all such buildings, erections, plant, or machinery, fixed or moveable, implements, railways, tramways, rolling stock, or other articles as for the time being shall be in or about the said respective premises, and shall be specified in such notice, the price to be paid for which (to be calculated at the price of the same for removal) shall be determined by arbitration; And shall also leave open and intact, free of cost to the lessor, all such shafts and pits and underground workings, and all

brickwork built of bricks upon which no royalty has been paid, as shall be required by such notice to be so left.

(p) That the lessee will not, without the written consent of the lessor, assign or underlet the said mines, minerals, or premises expressed to be hereby demised, or the powers hereby granted or any of them, or any part thereof, nor part with the possession of, nor confer on any other person or persons any right or interest in or over the same premises and powers, or any of them or any part thereof, nor contract or engage with any other person for working the same, excepting such persons as the lessee may *bonâ fide* employ for that purpose at a salary or wages paid in money. But the lessor shall not arbitrarily and without good and sufficient cause assigned withhold such consent, nor require any money, premium, or gratuity for giving the same.

(q) That the lessee will not, without the lessor's consent in each instance, raise any minerals which the lessee may be entitled to raise from the premises hereby demised otherwise than by a shaft or shafts sunk on the same demised premises, nor raise any minerals from any property not hereby demised by means of any shaft or shafts on the said demised premises (*a*).

(*a*) It is usual in Staffordshire leases for the lessee to covenant to supply the lessor with so many tons of coal

11. And the said H. V. doth hereby for himself, his heirs, executors, administrators and assigns, and also, so far as he is able without personal obligation in respect of their or any of their acts or omissions, for the person or persons who may for the time being come within the meaning of the term "lessor," as defined by these presents, covenant with the lessee that the said H. V. is tenant for life of the said demised premises within the meaning of the Settled Land Act, 1882, and that the lessee paying the rents, royalties, and other payments hereby reserved as and when the same ought to be paid, and observing and performing all covenants and conditions herein contained and on the lessee's part to be observed and performed, may hold and enjoy the premises and powers hereby demised without interruption or disturbance (other than such as may be occasioned by the working or other use or occupation of any property not included in this demise) by the lessor.

12. Provided always, that if the rents, royalties, and other payments hereby reserved, or any of them, or any part thereof respectively, whether demanded or not, shall be unpaid for twenty-eight days after any day whereon the same ought to be paid by virtue hereof, or if the lessee shall become bankrupt or compound with his creditors for the payment of his debts, or make any assignment of his personal estate or any part thereof for

gratis; but it is apprehended that such a covenant with a tenant for life might be impeached, and therefore none has been inserted.

the benefit of their creditors, and if any writ of execution or other legal process shall issue against the lessee under and by virtue of which this present indenture or the term hereby granted shall be seized or levied, or if the said lessee shall not observe and perform the covenants, conditions, agreements, and clauses herein contained and on the lessee's part to be observed and performed, or any of them, then and in any of such cases the lessor may re-enter upon and re-possess the premises hereby demised as of his former estate, without prejudice to the remedies of any party in respect of anything done or omitted by any other party during the subsistence of this demise or after the determination thereof.

13. Provided always, and it is hereby agreed, that whenever throughout these presents a ton is spoken of, such ton is intended to be the customary ton of the district, whether sold by canal, rail, or land-sale, but not in any case to exceed 2,640 lbs. machine weight.

14. Provided also, that if before the expiration of the said term the whole of the minerals hereby demised shall have been gotten, or if the said mines hereby demised shall be incapable of being worked to a fair profit (such incapability to be proved to the reasonable satisfaction of the lessor's mining agent for the time being), then and in either of such cases the lessee, having paid all rents and royalties hereby reserved, and observed and performed all covenants, conditions, and clauses herein contained, up to the time of surrender (or having made full compensation for

any breach thereof), may surrender the said premises to the lessor.

15. Provided lastly, and it is hereby agreed and declared, that if any dispute, question, difference, or controversy shall arise between the lessor on the one part, and the lessee on the other part, touching any rent, royalty, or money payable under these presents, or the measurement, quantity, or thickness of any minerals got or left in the said mine, or touching these presents, or any clause or thing herein contained, or the construction hereof, or any matter in any way connected with these presents or the operation hereof, or the rights, duties, or liabilities of any party in connection with the premises, then and in every or any such case or dispute, the matter in difference, whether hereinbefore expressed to be referred to arbitration or not, shall be referred to two arbitrators, or their umpire, pursuant to, and so as with regard to the mode and consequences of the reference, and in all other respects, to conform to, the provisions in that behalf contained in the Common Law Procedure Act, 1854, or any then subsisting statutory modification thereof; And upon any such reference, the costs thereof, and of the award, shall be in the discretion of the arbitrators or umpire, and either party to such reference shall be at liberty to make the submission to reference a rule of any division of the High Court of Justice.

In witness, &c.

The Schedule above referred to.

XII.

Transfer of Incumbrances under Sect. 5 of the Settled Land Act.

THIS INDENTURE is made the day of 188 , BETWEEN A. B., of &c. [*tenant for life*], of the one part, and X. Z., of &c. [*mortgagee*], of the other part: WHEREAS W. Y. [*recite will of settlor, his death, and probate of his will, as in Precedent III., sup. p.* 158]: AND WHEREAS the said testator was, at the date of his death, seised of the messuages, farms, and hereditaments specified in the first and second schedules hereunder written for an estate of inheritance in fee simple in possession free from incumbrances: AND WHEREAS by an indenture of mortgage, dated the day of 1883, and expressed to be made between the said A. B., of the first part, G. H. and I. J. (the trustees of the said will for the purposes of the Settled Land Act, 1882), of the second part, and the said X. Z., of the third part, by virtue of the powers of mortgaging conferred by the said Settled Land Act, 1882, all the said messuages, farms, and hereditaments specified in the said first schedule hereto, were together with other hereditaments conveyed to the said X. Z., his heirs and assigns, by way of mortgage for securing the repayment to the said X. Z., his executors, administrators and assigns, of a sum of £1,000 advanced by him for the purpose of being applied for some of the special objects authorized by the 18th section of the said Settled Land Act, 1882, together with interest for the same sum

after the rate of £ per cent. per annum: And whereas the said A. B. has under the powers of the said Settled Land Act, 1882, agreed with one P. R. to sell him the said messuages and hereditaments comprised in the said first schedule for an estate of inheritance in fee simple, free from incumbrances, for the sum of £500: And whereas the said sum of £1,000 is still owing to the said X. Z. on the security of the hereinbefore recited indenture of mortgage: And whereas, by virtue of the powers in this behalf conferred upon him as tenant for life by the 5th section of the said Settled Land Act, 1882, the said A. B. has agreed with the said X. Z. that the incumbrance created by the hereinbefore recited indenture of mortgage shall be charged on the said hereditaments described in the said 2nd schedule hereunder written in exoneration of the said hereditaments described in the said first schedule hereunder written, and which are as aforesaid agreed to be sold to the said P. R.: Now this Indenture witnesseth, that, in pursuance of the premises and in exercise of the power in this behalf conferred on him as tenant for life by the fifth section of the said Settled Land Act, 1882, He the said A. B., with the consent of the said X. Z., hereby charges the said debt of £1,000 and all interest due and to become due in respect of the same, and all other claims whatsoever which the said X. Z. may have under the hereinbefore-recited indenture of mortgage on the hereditaments described in the second schedule hereto in exoneration of the said hereditaments described in

the first schedule hereto, but not so as to affect the rights of the said X. Z. in relation to any hereditaments comprised in the hereinbefore-recited indenture of mortgage, save and except the said hereditaments described in the said first schedule hereto. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the premises, and in exercise of the aforesaid powers, the said A. B., AS BENEFICIAL OWNER, hereby conveys unto the said X. Z. and his heirs ALL and singular the said hereditaments described in the said second schedule hereto with their appurtenances, To HOLD the same premises expressed to be hereby conveyed unto and To THE USE of the said X. Z. in fee simple, subject nevertheless to such equity of redemption and to such other provisions as are subsisting under, or are contained in the hereinbefore-recited indenture of mortgage in relation to such of the hereditaments thereby assured as are still subject thereto. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the premises the said X. Z. as mortgagee hereby conveys and releases unto the said A. B. and his heirs ALL and singular the said hereditaments described in the said first schedule hereto with their appurtenances, To HOLD the same premises unto the said A. B. and his heirs To THE USES declared of and concerning the same by the hereinbefore-recited will of the said W. Y. deceased, or such of them as are still subsisting and capable of taking effect, freed and discharged from the hereinbefore-recited indenture of mortgage and all principal and interest and other moneys thereby secured. AND IT IS HEREBY AGREED AND DECLARED

that all covenants, provisoes, declarations, and agreements on the part of the said A. B. and the said X. Z. respectively contained in the hereinbefore-recited indenture of mortgage in relation to the hereditaments comprised therein, shall extend and be applicable to the said hereditaments described in the said second schedule hereto, as fully as if such covenants, provisoes, declarations, and agreements were set out in full in these presents and made applicable to the last-mentioned hereditaments.

In witness, &c.

The First Schedule above referred to.
[*The hereditaments released.*]

The Second Schedule above referred to.
[*The hereditaments charged.*]

PRECEDENTS.

II. Chancery.

I.

PETITION FOR APPOINTMENT OF TRUSTEES UNDER SECT. 38 OF THE SETTLED LAND ACT.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

[*Name of Judge.*]

IN THE MATTER of land settled by A. B. [*or* A. B. and others], by will dated [*or* deed dated], consisting of certain lands [*or* messuages or tenements] in , in the parish of , in the county of ;

AND IN THE MATTER of the "Settled Land Act, 1882."

TO HER MAJESTY'S HIGH COURT OF JUSTICE.

THE HUMBLE PETITION of E. C. D., of [*address and description*],

SHEWETH as follows:

1. [*Set out the limitations of the will or deed whereby the land was settled.*]

2. [*State death of testator (if land is settled by will), probate and facts showing the present state of affairs, and that there are no trustees (or only one), and no person capable of appointing, and that it is expedient to have them appointed, and that it is intended to exercise power of sale by tenant for life.*]

3. [*Show the property subject to the trusts of the settlement.*]

YOUR PETITIONER therefore humbly prays as follows:

1. That the said and may be appointed trustees under the said indenture [*or* will], dated for purposes of the above-named Act [*in substitution for retiring, &c. trustee, if the case be so*].
2. That the costs of all parties of and incident to this application may be provided for, or that such other order may be made in the premises as to this honourable Court shall seem meet.

AND your petitioner will ever pray, &c.

It is intended to serve this petition on [*parties to be served, as G. B. tenant for life, persons interested in remainder, &c.*]

II.

SUMMONS, UNDER SECT. 60, FOR THE APPOINTMENT OF A PERSON TO EXERCISE THE POWERS OF THE ACT ON BEHALF OF AN INFANT.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

VICE-CHANCELLOR BACON.

IN THE MATTER of estates settled by the will, dated &c., of A. B. [*or* by an indenture dated &c.];

AND IN THE MATTER of the Settled Land Act, 1882;

AND IN THE MATTER of C. D., an infant (by E. F., his next friend).

LET all parties concerned attend at my chambers, room No. —, Royal Courts of Justice, Middlesex, on day, the day of , 188 , at of the clock in the noon, on the hearing of an application on the part of the above-named [*or* "C. D. an infant"] infant C. D. by E. F., of &c., his guardian [*or* next friend], that the said E. F. [*state relationship or connection with infant*], or some other proper person may be appointed to exercise the powers by the above-named Act conferred on tenants for life under settlements on behalf of the said C. D. during his minority, or until further order, in accordance with the provisions in that behalf of the same Act; And that the costs of this application may be provided for.

Dated this day of 1883.

JAMES BACON, Vice-Chancellor [*or as may be*].

This summons was taken out by and , of Lincoln's Inn, in the county of Middlesex, solicitors for the applicant.

To X. Y., of &c. [*infant's father or guardian*].

NOTE.—If you do not attend, either in person or by your solicitor, at the time and place above-mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

[*If the application is to be made ex parte, the address and note should be omitted.*]

[*If the applicant acts in person, substitute the following for the name and address of solicitors taking out the summons* :—"This summons was taken out by E. F., of &c., in person, whose address for service is, &c."]

III.

Petition for Directions of Court under Sect. 44.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

[*Name of Judge.*]

In the Matter of the trusts of the will of A. B., deceased [*or* of an indenture of settlement dated the day of , 18];

and

In the Matter of the Settled Land Act, 1882.

TO HER MAJESTY'S HIGH COURT OF JUSTICE.

The humble petition of L. M., of &c., and O. P., of &c. [*trustees*], of [*address and description*],

Sheweth as follows:

[*State the facts concisely, divided into paragraphs, and numbered consecutively* 1, 2, 3, *and so on; e. g., the question between the trustees and the tenant for life may be such as, whether leaseholds originally purchased with the proceeds of sale of freeholds, but which are now deteriorating in value owing to the shortness of remainder of term, shall be retained or sold.*]

Your petitioners therefore humbly pray as follows, that is to say:

1. That this honorable Court will direct whether or not the leasehold hereditaments specified in paragraph 1 of this petition ought to be sold by

the said [*tenant for life*], and the purchase-money obtained therefor paid to your petitioners, the said L. M. and O. P., as capital money arising under the above-mentioned Act.

2. That the costs of this petition may be provided for.

And your petitioners will ever pray, &c.

It is intended to serve this petition on [*persons interested*].

IV.

NOTICE BY TRUSTEES OF APPLICATION TO THE COURT FOR DIRECTIONS UNDER SECT. 46, SUB-SECT. 4 (*a*).

[*Title same as petition No. III., sup.*]

Take notice that L. M., of &c., and O. P., of &c., have presented a petition in the above matters, praying that the Court will direct whether or not certain leasehold hereditaments, situate at and [*here describe hereditaments*], forming part of the above-mentioned settled lands, ought to be sold by you, and the purchase-money obtained therefor paid to the said L. M. and O. P. as capital money arising under the above-mentioned Act. And it is intended to apply to the said Court for an order in accordance with such prayer. This notice is given to you in pursuance of the 46th section, sub-sect. 4, of the above-mentioned Act, as tenant for life of the said settled lands. You or your

(*a*) This precedent is founded on Form No. 12, given in the Appendix to the Settled Estates Act Orders, 1878; but it is impossible to say with certainty whether or not it will be adopted in practice.

solicitors can, upon reasonable notice to the undernamed X. and Y. [*petitioners' solicitors*], inspect and peruse the said petition, at the address specified at the foot hereof, without payment of any fee, and you are entitled to have a copy of such petition furnished to you if you require one.

Dated this day of 18 .

X. & Y.,
150, Lincoln's Inn Fields,
Middlesex, W. C.,
Solicitors for the petitioners.

V.

REQUEST FOR A DIRECTION BY THE PAYMASTER-GENERAL TO PAY MONEY INTO COURT.

CHANCERY.

TO THE PAYMASTER-GENERAL.

A direction is requested to enable [A. B. of &c.,] to pay into Court the sum of £ to the credit of "*Ex parte* A. B., In the matter of the Settled Land Act, 1882," pursuant to Rule 25 of the Chancery Funds Consolidated Rules, 1874; such money not having been directed to be paid into Court by any order, and not being money to be paid into Court in pursuance of any Act of Parliament or general order by which some particular authority is required to enable the payment to be made.

Dated the day of , 188 .

C. D., of &c., agent for E. F., of &c., applicant's solicitor [*or* A. B., of &c., applicant in person].

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